



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 8 दिसम्बर, 2009/17 अग्रहायण, 1931

हिमाचल प्रदेश सरकार

HOME (Prosecution) DEPARTMENT

NOTIFICATION

Shimla-171002, the 3rd December, 2009.

No. Home (Pros.)B(2)4/2003.— The Governor, Himachal Pradesh is pleased to promote Shri Raghubir Singh, District Attorney (Class-I, Gazetted) as Joint Director (Class-I, Gazetted) temporary basis in the pay scale of Rs. 13,500-16,800 with immediate effect and pleased to order the transfer/posting of following Joint Director/District Attorney with immediate effect in the public interest as under:—

Sr. No.	Name of Joint Director	From	To
1.	Shri Raghubir Singh, Joint Director (on promotion)	Police Training Centre Daroh, District Kangra	Police Training Centre Daroh, District Kangra
2.	Shri Rameshwar Dyal, District Attorney	District Attorney Chamba	Police Training Centre Daroh, District Kangra against vacant post as incumbent there has been promoted as Joint Director without TTA/Joining Time

Shri Raghubir Singh shall remain on probation for a period of two years.

Shimla-2, the 7 December, 2009

No. Home (Pros.) B (6)1/08.—The Governor, Himachal Pradesh is pleased to order the transfer of Shri Vikas Dhaulta, Assistant District Attorney from Directorate of Prosecution, Himachal Pradesh. Kasumpti, Shimla to the office of District Attorney Shimla with immediate effect in public interest.

Shimla-171002, the 9 th November, 2009

No. Home (Pros.)B(2)4/2003.—The Governor, Himachal Pradesh is pleased to promote Sh. Tara Singh, District Attorney and Sh. Ram Lal Thakur, District Attorney (Class-I, Gazetted) as Joint Director (Class-I, Gazetted) in the pay scale of Rs. 13,500-16,800 with immediate effect.

Sh. Tara Singh, Joint Director will continue to work in the Bhakra Beas Management Board, Chandigarh and the posting order of Sh. Ram Lal Thakur Joint Director will be issued separately.

Both the officers shall remain on probation for a period of two years and they shall be eligible to exercise their option for the fixation of their pay as Joint Director under FR 22(1) a(1) within a period of one month from the date of issue of this notification.

By order
Sd/-
Principal Secretary.

EDUCATION DEPARTMENT

CORRIGENDUM

Shimla-2, 19th November, 2009

No. EDN-A-Ka(3)-1/2008-Loose.—Please read “**19th November, 2009**” instead of “**19th November, 2008**” in the Guidelines issued vide this Department Notification of even number dated the 19th November, 2008.

ADDENDUM

Shimla-2, 19th November, 2009

No. EDN-A-Ka(3)-1/2008-Loose.—Please add “**fulfil such other conditions and provide such information as may be prescribed by the University Grant Commission, All India Council of Technical Education or any other statutory body established by the law of the Central or State Government**” as additional point No. r in the para-10 of the Guidelines issued vide this Department Notification of even number dated the 19th November, 2009.

By order,
Sd/-
Principal Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, the 2nd December, 2009*

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of the following awards announced by the Preceding officer, Labour Court, Shimla in Rajpatra, Himachal Pradesh :—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	43/2009	S/Shri Baam Dev Vs Factory Manager, Ayuryet Ltd., Nalagarh.	1-10-2009
2.	49/2008	Kuldeep Singh Vs Managing Director M/s Kilitch Drugs India Ltd. Nihagarh, Poanta Sahib.	3-10-2009
3.	185/2003	Dharamatam Singh Vs A. E. HPSEB, Nahan, District Sirmaur, H. P.	6-10-2009
4.	95/2006	Hari Chand Vs The Chief Scientist, Krishi Vigyan Kendra, Poanta Sahib.	6-10-2009
5.	80/2006	Shankar Tiwari Vs President, Sirmaur Trunck Operator Union, Sirmaur.	12-10-2009
6.	112/2006	Charan Dass Vs Sr. XEN, HPSEB, Rampur, Shimla.	13-10-2009
7.	73/2007	Kesar Singh Vs XEN, IPH, Division No. II Shimla-3.	24-10-2009
8.	153/2006	Virender Singh Vs. DFO, Forest Division, Nahan.	24-10-2009
9.	04/2007	Mohan Singh Vs. Dr. Y. S Parmar University Solan.	24-10-2009
10.	131/2004	Hukam Chand Verma Vs M. D., H. P. Tourism Development Corporation, Shimla.	24-10-2009
11.	64/2006	Puspa Devi Vs DFO, Rohru.	24-10-2009
12.	139/2006	Parmod Kumar Sharma Vs Director, Valiant Plast, Pvt. Ltd., Parwanoo.	26-10-2009
13.	168/2003	Partap Singh Vs M. D. HRTC Shimla-3.	28-10-2009
14.	13/2006	Gopal Singh Vs XEN, HPSEB, Sunni, Shimla.	29-10-2009
15.	141/2006	Rakesh Kumar Vs. S.E. 4th Circle, HPPWD & Ors.	30-10-2009
16.	75/2005	Daulatu Ram & Ors Vs XEN, HPPWD, Sangrah, Sirmour	30-10-2009
17.	49/2007	Amar Singh Vs DFO, Wild Life, Division, Shimla.	30-10-2009
18.	234/2002	Dula Ram Vs Divisional Manager, HP State Forest Corporation, Saraswati Nagar, Jubbal, Shimla.	30-10-2009
19.	180/2006	Surinder Kumar Vs M. D., H. P. Tourism Development Corporation, Shimla & Ors.	30-10-2009
20.	65/2006	Rajesh Kumar Vs M. D. HRTC & Ors.	30-10-2009

By order,
Sd/-
Secretary.

Ref. 43/2009

1-10-2009

Sh Baam Dev V/s Factory Manager Ayuryet Ltd Nalagarh.

1-10-2009 :

Present : None.

It is already 12.30 PM but none appeared on behalf of the parties. Be awaited.

Sd/-

*Presiding Judge,
Labour Court, Shimla.*

It is 3.30 PM. Case called out pre and post lunch sessions but none appeared on behalf of the parties which shows that they had not interested to persue this case. Accordingly, the claim of the petitioner is dismissed in default as a result of which the reference is answered accordingly . Let a copy of this order be sent to the appropriate government for publication in official gazette. File , sfter completion, be consigned to records.

Announced

1-10-2009

Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref. 49/2008

3-10-2009

Sh. Kuldeep Singh V/s M.D. M/s Kilitch Drugs India Ltd, P/Sahib.

3-10-2009 :

Present : None for petitioner.

Sh.Surydeep Singh Thakur, Ld Vice Csl. for respondent.

It is 2.50 P.M. Case called out pre and post lunch sessions but no appearance put in by the petitioner which clearly shows that he has no interest to persue his case, hence the reference is dismissed in default. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced

3-10-2009

Sd/-

*Presiding Judge,
Labour Court, Shimla.*

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, H.P. Camp At Nahan

Ref no. 185 of 2003.

Instituted on 21-12-2003.

Decided on 6-10-2009.

Dharmatam Singh S/o Shri S/o Shri Inder Singh R/o village Nehar Sabar, P.O Challana
Tehsil Nahan, District Sirmour, HP. . . *Petitioner.*

Vs.

The Assistant Engineer, HPSEB, Nahan District Sirmour, HP.

. . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.

For respondent : Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“क्या श्री धर्मात्म सिंह सुपुत्र श्री इन्द्र सिंह, गांव नेहर सवार, डाकखाना चैलाना, तहसील नाहन, जिला सिरमौर, हि० प्र० तथा अधिशासी अभियन्ता, हि० प्र० विद्युत बोर्ड मण्डल, नाहन जिला सिरमौर द्वारा दिनांक 1-4-1995 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित व न्याय संगत है। यदि नहीं तो श्री धर्मात्म सिंह कामगार किस राहत एवं सेवालाभों का पात्र है?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was engaged as daily wages beldar/T-mate in the year 1979 under the HPSEB Sub Division, Bagthan, Division Nahan, who continued as such upto 31-3-1995 when his services were disengaged without following the mandatory provisions of law and the Standing Order framed by the Board as no notice nor any compensation was paid to the petitioner while disengaging the services of the petitioner and the junior persons are still continuing with the respondent and even fresh recruitments have also been made by the Board after the disengagement of services of the petitioner as the workmen who joined the Board in the year 1995, their services have been brought on the work charged establishment after completion of eight years of service, hence there is violation of section 25H of the Industrial Disputes Act, 1947 and that as per the standing orders, a workman who does not complete even 240 days of service is to be served with ten days notice before disengaging his service but no notice was given to the petitioner and as such the disengagement of the petitioner is unjust, arbitrary and in violation of the mandatory provisions of section 25F of the Industrial disputes Act, 1947 and the provisions of the Standing Order of the Act which is also unfair labour practice and as such prayed for reinstatement with all the benefits incidental thereof, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections having no legal enforceable cause of action, want of better particulars, barred by delay and laches and estoppel. On merits, it is contended that various works of respondent were being executed at different places under the Rural Electrification Programme and for those purposes, persons from adjoining village were engaged on daily wages to carry out the job and the petitioner was one of such persons, who were engaged on different occasions between the period from 26-6-80 to 31-3-1995 with lot of interruption of his own. The petitioner has not completed 240 days continuously in any calendar year and the services of the petitioner were never terminated, who left the job of his own. The petitioner was engaged for a specific period of work. It is also contended that no fresh recruitment have been made by the respondent and that the petitioner left the job of his own as per his convenience, who was not a regular worker and used to come as per his own convenience, hence prayed for dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 29-3-2005 on the pleadings of the parties:

1. Whether the termination of the services of the petitioner by respondent w.e.f. 1-4-1995 without complying the provisions of I.D Act, 1947 is proper and justified? OPR
 2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? OPP
 3. Whether there is no enforceable cause of action against the respondent? OPR
 4. Whether the petition suffers from delay and latches? OPR
 5. Whether the petitioner is estopped to file the present petition on account of his own acts, conduct and deeds? OPR
 6. Relief.
5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|--------------|---|
| Issue No. 1. | Yes. |
| Issue No. 2. | Not entitled to any service benefits. |
| Issue No. 3. | No. |
| Issue No. 4. | No. |
| Issue No. 5 | No. |
| Relief. | Reference answered in negative per operative part of award. |

REASONS FOR FINDINGS

Issue No. 1.

7. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as beldar in 1979 at Bagthan in HPSEB and he was removed from service on 31-3-1995. No notice nor compensation was paid to him at the time of his removal. All the juniors working with him are still in service. He was not called after March, 1995 as no muster roll was issued to the work where he was engaged. He had not left the job of his own. He had completed more than 240 days in a calendar year and as such prayed for reinstatement with full back wages.

8. To rebut the case of the petitioner, the respondent has examined Er. Santosh Pal Assistant Engineer, Electrical Sub Division, HPSEB Bagthan as RW1, who has stated that the petitioner was engaged as beldar on 26-6-1980 and continued as such till 31-3-1995, who was not regular during this period and thereafter he did not join his duties without any intimation whose service were not retrenched but he abandoned the job of his own and proved the mandays chart of the petitioner Ex. RA and they did not engage any junior of the petitioner in service.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still working with the respondent and as such he is entitled for reinstatement in service with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was never terminated from service, who left the job of his own without any intimation to the respondent and no junior to the petitioner is working with the respondent, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages beldar by the respondent on 26-6-1980, who continued as such till 31-3-1995, who worked for 30 days w.e.f. 26-6-1980 to 20-12-1982, 175 days w.e.f. 25-2-1983 to 20-12-1983, 69 days from 21-12-1983 to 20-9-1984, 87 days from 1-4-1985 to 20-11-1985, 181 days from 21-12-1985 to 20-12-1986, 75 days from 21-1-1987 to 20-2-1988, 92 days from 21-1-1990 to 20-9-1990, 74 days from 21-12-1990 to 23-8-1991, 119 days from 21-3-1993 to 20-11-1993 and 144 days w.e.f. 1-1-1994 to 31-3-1995 as is evident from the mandays chart Ex. RA placed on record and even RW1 Er. Santosh Pal has deposed that the petitioner has not completed 240 working days in any calendar year, who was not regular in his service and has also proved the mandays chart Ex. RA of the petitioner which goes to show that the peittioner has not completed 240 working days in twelve calendar months preceding his termination.

13. Thus, having regard to entire evidence on record, it is crystal clear that the petitioner has not completed 240 working days in a calendar year preceding his termination. The petitioner is required to prove on record having worked for 240 working days in twelve calendar months preceding his termination. Apart from oral evidence, the petitioner has not produced any evidence to prove the fact that he has worked for more than 240 days in a twelve calendar months preceding his termination. The mandays chart relied upon by the respondent has proved that the petitioner has not completed 240 working days in twelve calendar months preceding his termination. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service and as such the petitioner is not entitled for protection of Section 25F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager— Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

14. It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to him before his termination. I find no force in this contention as the standing orders of HPSEB has been exempted by the State of HP from all of the provisions of the Standing Orders Act by publication in HP Rajpatra dated 22.8.1992 page 1180, Shimla-2 the 11th Sept. 1985 and therefore it does not lie in the mouth of petitioner to say that the disengagement is bad for want of issuance of notice giving ten clear days to the employee. Since the petitioner has not completed 240 working days in twelve calendar year and therefore this court cannot come to the rescue of the petitioner. Here, I am fortified with a view

taken by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in **Executive Engineer HPSEB Joginder Nagar Vs. Sanju & Presiding Officer, Labour Court-cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 dated 18th May, 2007 of Hon'ble High Court of HP.** in which it was held that :—

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

15. Thus, on the strength of this ruling and having regard to the fact it can safely be concluded that the petitioner is not entitled to be given ten days clear notice before his disengagement from service especially when the petitioner has failed to prove on record that he had worked for 240 days in twelve calendar months preceding his termination.

16. Now, adverting to the other aspect of the case, the petitioner has tried to establish on record that the respondents retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondent board as daily wages beldar and who are they still continuing in service. On the other hand the respondent has proved on record that no juniors to the petitioner are continuing with the respondent and therefore this contention is not proved, hence rejected.

17. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner remained absent from his duties as per mandays chart Ex. RA and never completed 240 working days in twelve calendar months preceding his termination and as such the termination of services of the petitioner by respondent w.e.f 1-7-1995 without complying the provision of I.D Act, 1947 is proper and justified. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

18. Since I have held under issue no.1 above that the services of the petitioner were not illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 and Standing Orders of the HPSEB, hence the petitioner is not entitled to any relief as prayed by him. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No. 3.

19. In support of this issue, no evidence was led by the respondent being the legal issue. Since the petitioner has challenged his termination on legal grounds, hence the petitioner has enforceable cause of action against the respondent. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No. 4

20. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947, as it was held by their lordships of **Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing-cum-processing Service Society Limited and Another.** In which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the petition does not suffer from delay and laches. Accordingly this issue is decided in favour of petitioner and against the respondent.

Issue No. 5.

21. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. In view of no evidence on record, it can safely be concluded that the petitioner is not estopped from filing this petition by his own acts, conducts and deeds. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th Day of October, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla Camp at Nahan.

Ref. 95/2006
6-10-2009

Sh Hari Chand V/s Chief Scientist Krishi Vigyan P/Sahib.

6-10-2009 :

Present : None for petitioner.

Sh. Mukul Garg, Ld Csl. for respondent.

It is already 12.20 PM but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

6-10-2009 :

Present : None for petitioner.
Sh.Mukul Garg, Ld Csl. for respondent.

It is 2.55 PM. Case called out pre and post lunch sessions but no appearance put in by the petitioner or his counsel which clearly shows that he has no interest to persue his case, hence the reference is dismissed in default. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
6-10-2009

Sd/-
Presiding Judge,
Labour Court, Shimla Camp at Nahan.

Ref. 80/2006

Sh. Shankar Tiwari V/s Preseident Sirmour Trade Operator, Sirmour.

12-10-2009 :

Present : None for petitioner.
Respondent already exparte.

It is already 12.15 PM but no appearance put in by the petitioner or his council. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla

12-10-2009 :

Present : None.

Respondent already exparte.

It is 2.50 PM. Case is called out pre and post lunch sessions but no appearance put in by the petitioner or his counsel. I am also satisfied that proper opportunities have been afforded to the petitioner to lead his evidence but to no avail which clearly shows that the petitioner has no interest to persue this case. Accordingly, the claim of the petitioner is dismissed and as such the reference is ordered to be answered in negative. Let a copy of this order be sent to the appropriate government for publication in official gazette. File after completion, be consigned to records.

Announced.
12-10-2009

Sd/-
Presiding Judge,
Labour Court, Shimla Camp at Nahan.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No. 112 of 2006.
Instituted on. 3-8-2006
Decided on. 13-10-2009.

Charan Dass S/o Shri Kiru Ram R/o Village Badhal, P.O. Jeory, Tehsil Rampur Bushehar,
District Shimla, HP. . . *Petitioner.*

Vs.

The Senior Executive Engineer, Electrical Division, HPSEB Rampur Bushehar, District
Shimla, HP. . . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri M. S. Kanwar, Ld. Csl

For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Charan Dass S/o Shri Kiru Ram workman by the Senior Executive Engineer, Electrical Division, HPSEB Rampur Bushehar, District Shimla, HP w.e.f. 25.5.1999 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief and service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was initially engaged as daily rated beldar by the respondent w.e.f. 25-8-1989, who was posted at Electrical Division Sarhan, District Shimla where he worked till 25-3-1998 when his services were orally terminated by the respondent and during this period, the petitioner had completed 240 days in each calendar year and that the oral termination from the service was challenged before the Administrative Tribunal and during the pendency of the case, the services of the petitioner were again reengaged on 14-12-1998 and that the petitioner continued as such till 24-5-1999 and then his services were again terminated by the respondent without any notice and compensation as required under the Act and that the petitioner challenged his termination before the Administrative Tribunal which was dismissed on the ground of jurisdiction and then the petitioner raised demand notice to the respondent as per the provisions of Industrial Disputes Act, 1947 and that section 25F of the Industrial Disputes Act provides for conditions precedent to the retrenchment of workmen which was not followed by the respondent as no notice nor any compensation was paid to the petitioner by the respondent and that the respondent has also violated the provisions of section 25G and H of the Act by engaging nine fresh persons S/Shri Mohan Lal, Chattar Singh, Govind Singh, Sohan Lal, Bhagat Ram, Zalim Ram, Thakur Sain, Joban Dass and Jia Lal and that the claim of the petitioner for the post of subsequent vacancies has been ignored on erroneous considerations and even the respondent has also violated the provisions of the Standing Orders Act and as such prayed for reinstatement with all consequential benefits besides continuity, regularization and full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the HPSEB is a body corporate incorporated under the statute having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and shall by name sue and be sued and since HPSEB has not been assigned as such and respondents are mere functionaries of the HPSEB, hence the claim petition is bad for non joinder of necessary party, having no enforceable cause of action, estoppel and being time barred. On merits, it is contended that the petitioner was engaged on 25-8-1989 as daily waged beldar on muster roll basis against specific work in Electrical Sub Division, Sarhan, who worked upto 24-5-1999 with break and that the petitioner was engaged against specific work as and when the work was available with the respondent, who was reengaged on 14-12-1998 on the availability of work and on completion of work his services were disengaged w.e.f. 25-5-1999 by serving him notice and that the services of the petitioner could not be utilized by the respondent without work whose services automatically came to an end and the provisions of Industrial Disputes Act and Standing Orders are not applicable in the present case by virtue of notification dated 11-9-1985 whereby HPSEB is exempted from all the provisions of the standing orders and as such the provisions of section 25F, G and H of the Industrial Disputes Act are not applicable in the present case. It is denied that fresh persons were engaged by the respondent except those who are continuing on interim directions/orders of the court and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 10.8.2007 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by respondent w.e.f. 25-5-1999 without complying the provisions of I.D Act, 1947? If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? OPP
3. Whether the petition is bad for non joinder of necessary parties? OPR
4. Whether the petition is barred by limitation? OPR
5. Relief.

6. I have heard the Ld. Counsels for both the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|-------------|--|
| Issue No. 1 | Yes. |
| Issue No. 2 | Entitled to reinstatement in service with seniority and continuity but without back wages. |
| Issue No. 3 | No. |
| Issue No. 4 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

REASONS FOR FINDINGS

Issue No.1.

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as daily wages beldar with the respondent on 25-8-1989 and worked till

25-3-1998, who had worked for more than 240 working days in every calendar year preceding his termination. After, 1998 he was removed from service without any notice nor paid any compensation and he was reengaged on 14-12-1998 and worked till 25-5-1999 and then he was removed from service after serving notice under 14 (2) of the Standing Orders of HPSEB and proved the notice Ex. PA. His juniors S/Shri Chattar Singh, Mohan Lal, Jia Lal, Bhagat Ram, Zalimi Ram, Jobhan Dass and Govind Singh are still working with the respondent who are made regular by the respondent and as such prayed for reinstatement with seniority and continuity alongwith back wages.

9. To rebut the case of the petitioner, the respondent has examined RW1 Er. M.R Chauhan, who has stated that the petitioner was engaged as beldar on daily wages on 25-8-1989, who continued as such till 24-5-1999 and then a notice was served upon the petitioner for his retrenchment as no work was available with the respondent and the petitioner had completed 240 working days in the year 1990 but the petitioner has not completed 240 working days in preceding twelve calendar months of his termination.

10. The case of the petitioner is that he being daily wages beldar having completed 240 working days in each calendar year preceding his termination, who was illegally terminated from service after giving notice under the Standing Orders of HPSEB but no compensation was paid to him at any point of time which is against the provisions of Industrial Disputes Act, 1947 and even after his termination, the respondent has retained juniors to him and as such he is entitled for reinstatement with all consequential benefits including back wages.

11. On the contrary, the respondent contends that the petitioner was engaged for specific period and for specific work and his services were legally terminated after the completion of specific work and even notice for retrenchment was served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar on 25-8-1989, who worked with the respondent till 24-5-1999 when his services were terminated by the respondent, who worked for 124 days w.e.f. 25-8-1989 to 31-12-89, 345 days from 1-1-1990 to 31-12-1990, 342 days from 1-1-1991 to 31-12-1991, 344 days from 1-1-1992 to 31-12-1992, 85 days from 1-1-1993 to 24-8-1995, 112 days from 25-8-1995 to 24-12-1995, 299 days from 1-1-1996 to 31-12-1996, 294 days from 1-1-1997 to 24-12-1997 and 160 days from 25-11-1998 to 24-5-1999 as is evident from the annexure RA.1 filed by the respondent alongwith its reply. No doubt that the respondent has tried to establish on record that the petitioner has not completed 240 working days in twelve calendar months preceding his termination but if we calculate the twelve calendar months preceding his termination then it comes to 296 days but the respondent has failed to prove on record that legal notice under section 25F was served upon the petitioner before terminating his services as the respondent has served the notice under the Standing Orders of HPSEB which is not sustainable under the eyes of law and the HPSEB is exempted from all the provisions of Standing Orders Act by virtue of notification dated 11-9-85 published in Rajpatra on 22-8-1992 which fact has also admitted by respondent in its reply, hence it does not lie in the mouth of the respondent to say that legal notice was served upon the petitioner at the time of his termination especially when it is fully proved on record that the petitioner has completed 240 working days in twelve calendar months preceding his termination.

Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. After the close scrutiny of section 25-F, it is clear that termination of services of the petitioner, who has worked for more than 240 days in a calendar twelve months preceding his termination and his termination without notice under section 25F and payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25F of the I.D Act, 1947. Moreover, it is well settled by our own Hon'ble High Court incase titled as State of Himachal Pradesh Vs. Sohan Lal reported in latest HLJ 2007 (HP) 776 in which it was held that :

“Industrial Disputes Act, 1947, Section 25F. Counting of 240 days for compliance of section 25F. 240 days has to be calculated preceding the date of retrenchment during 12 calendar months and not a year. Retrenchment was void ab-initio for non compliance with the mandatory provisions of section 25F.”

15. Apart from it, the petitioner has alleged in his statement and his claim that his juniors S/Shri Chattar Singh, Mohan Lal, Jia Lal, Bhagat Ram, Zalimi Ram, Jobhan Dass and Govind Singh are still working with the respondent who are made regular by the respondent but it is significant to note that the respondent has not cross examined the petitioner on this point of retaining juniors and as such the assertion of petitioner on the point of his juniors working with the respondent remained unsheltered and unchallenged and further more there is no condition precedent of 240 working days where the petitioner has proved that his juniors are still continuing with the respondent which amounts to unfair labour practice and also against the principle of natural justice of last come first go. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903. in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

16. Thus, having regard to entire evidence on record and having regard to the above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of petitioner by the respondent without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as the respondent has violated the provisions of sections 25F of the Industrial Disputes Act, 1947 as no proper notice nor compensation was paid under section 25F of the Act was given upon the petitioner by the respondent and even the juniors to the petitioner are still continuing with the respondent and the termination of petitioner is bad under section 25G & H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

17. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following with the provisions of Industrial Disputes Act, 1947 is improper, illegal and unjustified, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3

18. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the evidence on record and found that the respondent has not proved on record that who are the necessary parties left to be impleaded in the petition. In view of no such evidence on record, I have no hesitation in coming to the conclusion that the petition is not bad for non joinder of necessary parties. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

ISSUE NO. 4.

19. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Another* in which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the petition is not barred by limitation. Accordingly, issue No. 4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he

has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th October, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref no. 73 of 2007.
Instituted on 24-8-2007.
Decided on. 24-10-2009.

Kesar Singh S/o late Shri Ram Saran R/o Village Jajher, P.O Gumma, Tehsil Sunni, District Shimla, HP. Petitioner.

Vs.

The Executive Engineer, I&PH Division No. II Shimla-3 . . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Kesar Singh S/o late Shri Ram Saran workman by the Executive Engineer, I&PH Division no.11, Shimla-3 w.e.f. 1-2-1998 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was initially appointed as daily wages beldar with the respondent w.e.f. 1-1-1998, who worked continuously to the utmost satisfaction of his superiors but the respondent orally terminated the services of the petitioner on 30-11-1998 and that the petitioner had completed 240 days in each calendar year and also in preceding twelve calendar months from the date of his termination, who had worked for 334 days w.e.f. Jan. 1998 to November, 1998 and that the petitioner has unblemished record of his service, who never gave an opportunity of complaint and that against the oral termination, the petitioner filed an O.A. before the Administrative Tribunal which was disposed of on 18-4-2005 for want of jurisdiction and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and that the respondents have recruited

several fresh hands in service and even juniors to the petitioner are retained by the respondent and no notice nor salary has ever been given to the petitioner while terminating the services and that the petitioner filed a demand notice with the respondent for his reengagement and that the conciliation meeting failed due to the unreasoned attitude of the respondent and that the petitioner had completed 240 days in each calendar year right from his initial date of appointment and that juniors S/Shri Krishan Dass, Ishwar, Ghanshyam, Tek Dass, Geeta Ram, Sunil, Hira Lal, Ritu Raj, Tek Chand, Sagar Dass, Mohinder Singh, Jai Chand, Prakash, Narender Singh and Durgesh Sharma are still working with the respondents and as such the respondents have violated the sections 25B, 25F, 25G and 25H of the Industrial Disputes Act, 1947 and that the respondents have never charge sheeted the petitioner before his termination and that the respondents are required to maintain the proper seniority of the workmen working with them and the petitioner is entitled for employment in accordance with seniority but the respondents have failed to discharge their duties and as such prayed for reinstatement in service alongwith all consequential benefits including back wages, continuity, regularization, promotion and other allied service benefits, hence this claim duly supported by an affidavit.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of having barred by limitation and maintainability. On merits, it is contended that the petitioner was engaged as casual labour on daily wages on 1-6-1998 in Public Health Sub Division, Gumma and worked only upto 30-11-1998, who had worked for 141 working days. The petitioner worked only for cleaning the tanks, who left the work after completion of work as he was made to understand the same at the time of engagement alongwith other similar situated persons and that the petitioner has stating falsely that he had completed 240 days. It is also contended that the petitioner was engaged as casual labourer for specific work and left the work after completion of work alongwith other similar situated persons as they were engaged for limited purpose. It is denied that the petitioner approached the respondent for his reengagement. It is also denied that any fresh persons were engaged by respondent No.2 and juniors have been retained by the respondent and that the respondent never violated the principle of last come first go and that no junior to the petitioner is working at present with the respondent and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 21.10.2008 on the pleadings of the parties:

1. Whether the termination of services of the petitioner by the Executive Engineer, IPH Division No.11 Shimla-3 w.e.f. 1-2-1998 without complying the provisions of the Industrial Disputes Act, 1947 is improper and unjustified? OPP
2. If issue No.1 is proved in affirmative, to what relief of service benefits and amount of compensation the petitioner is entitled to and since when? OPP
3. Whether the claim petition is barred by limitation as alleged? OPR
4. Whether the claim of the petitioner is not maintainable as alleged? OPR
5. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|--------------|---|
| Issue No. 1. | Yes. |
| Issue No. 2. | Entitled for reinstatement in service without seniority, continuity and back wages. |

Issue No. 3.	No.
Issue No. 4	No.
Relief.	Reference partly answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. Coming to this issue, the petitioner appeared into the witness box as PW1, who has stated that he was engaged as beldar on daily wages with the respondent at Gumma on 1-1-1998 and continued as such till 30-11-1998 and then he was terminated from service without notice and without compensation, who had worked for more than 240 days in a calendar year preceding his termination. His juniors S/Shri Hira Lal, Narain Singh, Thakur Dass, Nehar Singh, Joginder Singh and Kewal Ram are retained by the respondent and as such prayed for reinstatement with all consequential benefits including back wages.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Ashok Kumar, who has stated that the petitioner was engaged as casual labour on daily wages on -6-1998 in Public Health Sub Division, Gumma, who continued as such till 30-11-1998, who had worked only for 141 days and proved the mandays chart of the petitioner Ex. RA. The petitioner was engaged for cleaning the water tanks which was temporary in nature and the petitioner was made to understand that he was engaged for specific work and for specific time and on the completion of the work his services would be dispensed with alongwith other similar situated persons and the petitioner had never completed 240 working days in twelve calendar months and proved the muster rolls of the petitioner Ex. RB to Ex. RF and the petitioner also approached the Administrative Tribunal where his O.A. was dismissed for want of jurisdiction vide Ex. RG. The petitioner never approached the department for his reengagement in service and no junior to the petitioner was engaged by the respondent no.2 nor is continuing with the respondents and the mandays chart of the casual labourers of Gumma Sub Division is Ex. RH and the persons S/Shri Krishan Dass, Ishwar, Ghanshaim, Tek Dass, Geeta Ram and Sunil were similar situated persons who are not working with the respondents who are shown at serial No. 1 to 6 in Ex. RH and S/Shri Heera Lal, Ritu Raj, Tek Chand, Sagar Dass, Mohinder, Jai Chand, Om Prakash, Narinder Singh and Durgesh are senior to the petitioner. They maintain the seniority list of the workman who completes 240 working days in a calendar year and they have followed the principle of last come first go in this case and S/Shri Kewal Ram and Joginder were initially engaged by Public Health Sub Division, Dhalli under Division no.2, Shimla and not by the Public Health Sub Division, Gumma and in 2007, Kewal Ram and Joginder were transferred to Sub Division, Gumma and Narayan Singh is an old workman of their Sub Division who was reengaged on 1-11-1999 due to exigencies of service. S/Shri Thakur Dass and Mehar Singh were engaged by Water Supply Sub Division no.3 under Water Supply and Sewerage Division, Shimla-9 which Sub Division was merged into I&PH Division no.2 with staff, assets and liabilities. S/Shri Kewal Ram and Joginder were engaged in July, 2005 and Jan. 2004 respectively by Public Health Sub Division, Dhalli and the claim of the petitioner has become stale, who has filed this claim after about ten years and even no representation was made by the petitioner for his reengagement in service and as such the claim of the petitioner is false.

9. Shri J.R Sharma, Ld. Counsel for the petitioner has vehemently argued at the very outset that though the petitioner has worked for 141 days in twelve calendar months but his junior Shri Narayan Singh is still working with the respondent w.e.f. 1-11-1999. He has urged that though the respondent has tried to establish on record that Shri Narayan Singh is an old workman but there is nothing on record which could show that Shri Narayan Singh is senior to the petitioner but not junior and therefore the petitioner being the senior to Shri Narayan Singh is entitled to be reinstated in service with all consequential benefits.

10. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Sharma and has submitted that the claim of the petitioner is false and stale and the petitioner has not completed 240 working days in twelve calendar months nor any junior workman is continuing with the respondent and as such the claim of the petitioner is liable to be dismissed.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner had put in 141 working days in twelve calendar months with the respondent which fact has not been disputed by both the parties but at the same time RW1 Er. Ashok Kumar has admitted in his cross examination that Shri Narayan Singh has been working since 1-11-1999. No doubt that the case of the petitioner is that he was working with the respondent since 1-1-1998 and continued as such till 30-11-1998 and then he was terminated from service without notice and without payment of compensation. It is also proved on record that Shri Narayan Singh, junior to the petitioner is still continuing with the respondent department. The respondents have failed to prove on record that Shri Narayan Singh is an old workman or in other words that he was senior to the petitioner and was reengaged by following the principle of last come first go. In view of no such evidence on record, I have no hesitation in coming to the conclusion that Shri Narayan Singh is the junior to the petitioner, who is still continuing with the respondent whereas the petitioner was not called by the respondent to resume his duties which is clear cut violation of principle of natural justice and last come first go. It is also clear that the petitioner was engaged by the respondent as beldar on daily wages, who worked with the respondent till 11/1998 as is evident from the mandays chart Ex. RA placed on record. Moreover, the petitioner has proved on record that his junior Shri Narayan Singh is still working with the respondent and as such it is a clear violation of sections 25G and H of the Industrial Disputes Act, 1947 as RW1 Er. Ashok Kumar has admitted in his cross examination that Shri Narayan Singh has been working with their sub division since 1-11-1999 where as the petitioner was disengaged by the respondent on 30.11.1998 meaning thereby that Shri Narayan Singh is to be termed as junior to the petitioner on record or in other words the respondent had violated the principle of first come last go, whereas the services of the petitioner were illegally terminated without complying with the provisions of section 25G & H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

13. Similarly, our own Hon'ble High Court of HP has held incase titled as State of HP & another V/s Hussain Chand as reported in latest 2007 (3) Shim. LC 265 in which it was held that:—

“Where juniors to the petitioner were retained while the services of the petitioner were terminated. Award of reinstatement with backwages upheld”.

14. Thus, having regard to the above cited rulings and having regard to the entire evidence on record and in view of the fact that Shri Narayan Singh junior to the petitioner is still working with the respondent and as such the termination of services of petitioner by the respondent w.e.f. 1.2.1998 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the

provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

15. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 by retaining Shri Narayan Singh junior to the petitioner in service, hence the petitioner is held entitled to his reinstatement in service without seniority and continuity being the belated claim and also without back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3.

16. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordships of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another** in which it was held that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

17. Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4.

18. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue No.1 to 4, the claim of the petitioner partly succeeds and is hereby allowed partly and the petitioner is ordered to be reinstated in service forthwith without seniority and continuity and also without back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 24th October, 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, H.P.

Ref No. 153 of 2006.
Instituted on 18-11-2006.
Decided on. 24-10-2009.

Virender Singh S/o Shri Tikka Ram R/o Village Kalyari, P.O Dadahu, Tehsil Nahan, District Sirmour, HP. . . *Petitioner.*

Vs.

The Divisional Forest Officer, Forest Division Nahan, District Sirmour, HP. . . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R. K. Khidta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Virender Singh S/o Shri Tikka Ram workman by the Divisional Forest Officer, Forest Division Nahan, District Sirmour, HP w.e.f. 1.4.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was engaged as beldar on daily wages by the respondent department in the month of July, 1996 and worked as such till Sept. 1999 whose services have been terminated orally by the respondent in the month of Sept. 1999 and the petitioner had no option except to challenge his oral termination before the Administrative Tribunal whereby the oral termination of the petitioner was quashed and set aside and the respondent was directed to reengage the petitioner on the same post in the same place and the period of the absence between his disengagement and reengagement was allowed to be continued for the purpose of seniority and that the services of the petitioner were again terminated by the respondent w.e.f. 1-4-2002 and that the petitioner again approached the Administrative Tribunal whereby the petition was dismissed on the ground of jurisdiction and that the petitioner visited the office of the respondent for his reengagement but to no avail and then the petitioner filed demand notice before the Labour-cum-Conciliation Officer and due to the adamant attitude of the respondent department, the conciliation proceeding failed and that the petitioner already completed 240 days in a calendar year and the services of the petitioner have been orally terminated without complying the mandatory provisions of Industrial Disputes Act, 1947 and that the respondent department has also engaged new persons and the petitioner has not been reengaged by the department and even the juniors to the petitioner are still continuing with the respondent and that the work with the respondent is very much available and there is no scarcity of funds and that the petitioner has every right to continue in the job till the date of superannuation and the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent department is against the provisions of Industrial Disputes Act, 1947 and the action of the respondent department is totally illegal, unjust, arbitrary and against the principle

of natural justice which deserves to be quashed and set aside and as such prayed for reinstatement w.e.f. 1-4-2002 with all consequential benefits alongwith seniority, continuity and back wages, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, suppression of material facts and that the respondent department is not an industry and the petitioner never completed 240 working days. On merits, it is contended that the petitioner was engaged as beldar on daily wages in the department in the year 1996. It is denied that the petitioner worked continuously in the department. It is also denied that the petitioner performed his duties to the entire satisfaction of his superiors. It is contended that the work was given to the petitioner on the availability of work and funds with the department and the petitioner did not come to work of his own and the services of the petitioner were never terminated by the respondent who himself failed to join his duties as the petitioner is not willing to join the work in the department as he is running shop of his father wherefrom he is earning and the only motive of the petitioner is to seek the regularization in the department without doing work in the department and that the petitioner never visited the respondent rather the respondent sent various reminders and calls to the petitioner to resume the duties but all in vain and that the petitioner never completed 240 days in any calendar year nor his services were orally terminated by the respondent, hence no question arises to violate the provisions of Industrial Disputes Act, 1947 and that since the petitioner did not come to work despite directions, new workers had to be engaged by the department to complete the requirement of seasonal work to avoid huge public loss and some of them are still working with the department and that the respondent is providing the work as per availability of work and funds with the department and on completion of work, the labourers are disengaged from the work and that the petitioner is workman but Industrial Disputes Act does not apply in the present matter as no department of forest can be treated as an Industry and the petitioner has filed the frivolous and false claim due to which every complaint filed by him has become infructuous and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 8-10-2007 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated w.e.f. 1-4-2002 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? OPP
3. Whether the claim in the present form is not maintainable? OPR
4. Whether the respondent department is not an industry? If so, its effect? OPR
5. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|--------------|---|
| Issue No. 1. | Yes. |
| Issue No. 2. | Entitled for reinstatement in service with seniority and continuity but without back wages. |
| Issue No. 3. | No. |

Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined four PWs in all. PW1 Shri Chunni Lal, Vice President of Gram Panchayat Birla has stated that he knows the petitioner and the village of the petitioner is one Kilometer away from his village which falls in his Panchayat. None from the DFO Nahan came with the summon/notice in his presence. The petitioner is residing in the village and the Gram Panchayat Thana Kashoga is about 10-12 Kms from their Panchayat and the official of Gram Panchayat Thana Kashoga are having no concern with their Panchayat and the President and Vice President of Thana Kashoga Panchayat never visited his village.

9. The petitioner appeared into the dock as PW2, who tendered his affidavit Ex. PW2/A and copy of demand notice Ex. PW2/B in his evidence.

10. Shri Rajinder, beldar in forest department stepped into the witness box as PW3, who has stated that he knows Virender Singh who also worked in forest nursery at Patandi and he was never deputed by the forest department to call Virender Singh by the forest department in his presence and he never made any statement to the forest department at any point of time to the effect that any notice was served upon Virender Singh in his presence.

11. PW4 Shri Ashok Kumar, Deputy Ranger, Jamta Range has stated on oath that the petitioner was engaged in July, 1996 as beldar on daily wages for specific period, who continued as such till Feb. 2003 with fictional breaks with the respondent. The respondent has engaged many persons to execute the seasonal work but he cannot say how many persons were engaged and the seniority list is maintained at divisional level by the Range Officer of the workmen who have completed 240 working days in a calendar year and no notice nor compensation was given to the petitioner at the time of his termination.

12. To rebut the case of the petitioner, the respondent has examined four RWs in all. RW-1 Shri Vijay Pal, Deputy Ranger, Forest Division Rajgarh has stated that earlier he was posted as Deputy Ranger, Panjhal in Jamta Range of District Sirmour and the petitioner was engaged as daily wages beldar in July, 1996 who worked till 2003. The petitioner was engaged on seasonal work and for specific period and after the completion of the work, the petitioner including other workmen used to leave the job subject to the availability of work. The petitioner also preferred a petition before the Administrative Tribunal which ordered for his reengagement. The petitioner had not completed 240 working days in any calendar year preceding his termination, who misrepresented before the Administrative Tribunal and then the petitioner was reengaged but the petitioner was irregular in his duties and no fictional breaks was given to the petitioner by the respondent, who was never terminated from service. The petitioner is running a shop alongwith his father at Dadhahu, who is having a roaring income from the shop. The petitioner again filed an OA which was dismissed as withdrawn and subsequently, the petitioner filed a contempt application before the Administrative Tribunal which was dismissed. The petitioner never approached before R.O. Jamta, who used to proclaim that he would only join his duties if he is given regular job and when the petitioner did not join his duties, the respondent had no alternative but to engage other workmen for completion of seasonal work and to avoid the public loss. The petitioner was also given notice Ex. RB issued by him which was served by Hukmi Ram Forest Guard Patandi Beat but the petitioner refused to accept the same vide report of shri Hukmi Ram and earlier notice Ex. RC was served upon the petitioner by Shri Balbir Singh Forest Guard Patandi Beat alongwith Shri Rajinder Dutt, daily wages worker and they have also obtained the certificate mark A & B from Vice

Pradhan, Gram Panchayat, Thana Kasoga to the effect that the petitioner refused to resume his duties and proved the mandays chart of the petitioner Ex. RA.

13. RW2 Shri Balbir Singh, Deputy Ranger, Forest Division, Nahan has stated that he remained posted at Jamta as forest guard w.e.f. 1999 to 2002 and the petitioner was daily wages beldar with the respondent at Patandi Beat. He issued notice Ex. RC to the petitioner and served upon the petitioner at his Dadhhahu shop when the petitioner was not found at his home in the presence of Rajinder Dutt daily wages worker, who accompanied him at the relevant time. The petitioner refused to accept the notice by saying that he would not join his duties as he was earning handsomely upon which he made a report upon notice Ex. RC which bears his signatures and of Shri Rajinder Dutt. Shri Tika Ram father of the petitioner is running a shop at Dadhahu, who was sick at that time and the petitioner is running a shop of his father and the certificate mark A was obtained from Vice Pradhan, Thana Kasoga, who met him at Dadhahu and the statement refusing to take notice was made by the petitioner in the presence of Vice Pradhan and the certificate Ex. RD was written by him and signed by Vice Pradhan. Shri Rajinder Dutt was also sent earlier and thereafter to the house of the petitioner to ask the petitioner to resume his duties and the statement Ex. RE was also recorded by him before Vice Pradhan of Thana Kasoga which bears the signature of Vice Pradhan and Rajinder Dutt.

14. RW3 Shri Hukmi Ram, Forest Guard, Forest Division Nahan has stated that he was entrusted with a notice Ex. RA to be served upon the petitioner by Deputy Ranger and he was accompanied by Shri Babu Ram forest worker and went to the house of the petitioner on 13-7-2005 but the petitioner refused to accept the same and also to resume his duties upon which he made a report Ex. RF which bears his signatures and that of Babu Ram.

15. RW4 Shri Surinder Singh has stated that he remained Vice President of Gram Panchayat, Thana Kasoga w.e.f. 2001 to 2005 and he knows the petitioner and his father. He also knows Balbir Singh, Forest Guard now Deputy Ranger and Rajinder Dutt forest worker and in the year, 2002 Rajinder Dutt and Balbir Singh met him at Dadahoo near the shop of father of the petitioner, who had visited Dadahoo to serve notice upon the petitioner to resume his duties as he was a daily wagger in the forest department but the petitioner refused to take the notice and refused to sign the same in his presence. The father of the petitioner was ill and the petitioner used to lookafter the shop of his father, who used to sit in the shop in place of his father. The father of the petitioner was having a shop at Dadahoo of cement jalties and he issued certificate Ex. RD which bears his signatures and the statement of Rajinder Dutt was also recorded which also bears his signatures on Ex. RE and the father of the petitioner also remained admitted in hospital at Nahan.

16. Shri R.K Khidta, Ld. Counsel for the petitioner has vehemently argued at the very outset that though the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months but it is proved on record that juniors to petitioner are still working with the respondent department and even no domestic enquiry was conducted by the respondent to prove the case of abandonment of the job and as such he has urged that the petitioner is entitled to be reinstated in service with all consequential benefits.

17. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Khidta and has submitted that it is a clear case of abandonment and the respondent has sent the forest officials to affect service upon the petitioner to resume his duties but the petitioner failed to turn up on the ground that he was getting handsome income from the shop of his father, who never intended to resume his duties and as such the claim of the petitioner is liable to be dismissed being clear cut case of abandonment.

18. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

19. After the close scrutiny of the record of the case, it remains a fact that the petitioner failed to prove on record that he has completed 240 working days in twelve calendar months. It is proved on record that the respondent has engaged new persons after termination of the petitioner and further RW1 Shri Vijay Pal, Deputy Ranger, Forest Division, Rajgarh has admitted in his cross examination that the respondent has engaged new persons and obviously therefore, it is clear from the record that the junior to the petitioner are still working with the respondent department and it is well settled that the requirement of 240 working days in twelve calendar months is not applicable where the junior to the workman is engaged and continuing with the respondent department.

20. Now, turning to the other aspect of the case, the respondent has tried to establish on record that the petitioner has abandoned the job of his own who was asked time and again to resume his duties by serving notices and reminders to him from time to time by the forest officials but the petitioner has failed to report for duties and even notices were served upon the petitioner by the respondent department at his place of working i.e the shop of his father in the presence of Vice President of Thana Kasoga which was not accepted by the petitioner but it remains a fact that no domestic enquiry was conducted by the respondent against the petitioner. Moreover, PW3 Shri Rajinder Dutt who alleged to have affected service upon the petitioner has not admitted the case of the respondent who appeared into the witness box as PW3 and stated that he was never deputed by the forest department to call petitioner to resume his duties nor any notice was served upon the petitioner by the forest department in his presence, who never made any statement to the forest department at any point of time to the effect that any notice was served upon the petitioner in his presence and as such it is clear that the petitioner had not abandoned the job of his own. Moreover, it is well settled by our own Hon'ble High Court incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

21. Thus, having regard to the entire evidence on record, it is fully proved on record that the respondent had engaged new persons into the job by ignoring the petitioner which is clear cut violation of sections 25G and 25H of the Industrial Disputes Act, 1947 and even the principle of last come first go was not followed by the respondent before terminating the services of the petitioner and as such I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated without complying with the provisions of section 25 G & H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC** in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

22. Similarly, our own Hon'ble High Court of HP has held incase titled as **State of HP & another V/s Hussain Chand as reported in latest 2007 (3) Shim. LC 265** in which it was held that:—

“Industrial Disputes Act, 1947, Section 25G. Reinstatement with back wages. Junior to the petitioner were retained while the services of the petitioner were terminated. Award of reinstatement with backwages upheld”.

22. Thus, having regard to the above cited rulings and inview of the entire evidence on record and that junior to the petitioner are still working with the respondent and as such the termination of services of petitioner by the respondent w.e.f. 1-4-2002 without complying the

provisions of Industrial Disputes Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly, issue No.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

23. Since I have held under issue no.1 above that the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 by retaining junior workmen to the petitioner in service, hence the petitioner is held entitled to his reinstatement in service with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No.3.

24. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this claim which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No. 4.

25. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the respondent department falls under the Industrial Disputes Act, 1947 as it was held by the **Full Bench of Hon'ble Supreme Court reported in 1978 (2) SCC 213** in which it was held that **the educational institute and research centres are Industry**. It was further held by the Hon'ble Supreme Court in case titled **Banglore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349** in which it was held that **a University is an Industry particularly with respect to small workers like mali, Chowkidars, Carpenters etc** and as such on the strength of above cited judgments, it can safely be concluded that the petitioner being daily wagger workman covered under the Industrial Disputes Act, 1947 and the respondent department is an Industry and governed by the Industrial Disputes Act, 1947. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue No.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 24th October, 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref. 4/2007

24-10-2009

Sh. Mohan Singh V/s Dr. Y.S. Parmar University, Solan.

24-10-2009

Present : Sh J. R. Sharma, Ld csl. for petitioner.

Sh. B. S. Attri, Ld, csl for respondent.

No PWs resent nor any steps taken. Heard. I am Satisfied that sufficient opportunities have been afforded to the petitioner to bring his evidence but to no avail, hence the evidence of the petitioner is closed.

In view of no such evidence on record, issue No 1. is decided against the petitioner holding that the services of the petitioner have not been illegally terminated by the respondents without complying the provisions of industrial Disputes Act, 1947 and consequently the petitioner is not entitled to any service benefits. Accordingly issue No.1& 2 are decided against the petitioner. As regards to issue No 3. it was not pressed by the respondent, however I find nothing wrong with the maintainability of this claim which is maintainable in the present form and as such the claim of the petitioner is dismissed for want of evidence on record as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced

24-10-2009

Sd/-

*Presiding judge,
Labour Court, Shimla.*

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla.

Ref. No. 131 of 2004.

Instituted on. 8-10-2004.

Decided on. 24-10-2009.

Hukam Chand Verma S/o Shri Sewa Ram R/o Village Dayla, P.O Chaini via Dhalli Tehsil
Sunni, District Shimla, HP. . . *Petitioner.*

VERSUS

The Managing Director, HP Tourism Development Corporation, Ritz Annexe, Shimla-1.

. . *Respondent*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner Shri Satyen Vaid, Ld. Csl.

For respondent Shri Tarun Vaid, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Hukam Chand Verma S/o Shri Sewa Ram workman by the Managing Director, HP Tourism Development Corporation, Ritz Annexe, Shimla 171001 w.e.f. 13-12-1990 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Hukam Chand Verma is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the petitioner was appointed by the respondent as an Assistant House Keeper in the year 1986, who worked continuously and without any break with the respondent and that the petitioner proceeded on leave with the permission to leave the station w.e.f. 22-6-1990 but the petitioner could not join his duties after the expiry of the leave as he was falsely implicated in a criminal case and that the respondent issued a letter dated 23-11-1990 showing cause that why he should not be terminated from service within ten days if he does not join his duties which was replied by the petitioner vide letter dated 29-11-1990 and after receipt of show cause notice dated 23-11-1990, the petitioner joined his service and performed his duties for about three months but no salary was paid for this period and the petitioner was told that he would be allowed to work only after acquittal in criminal case and that despite refusal by the respondent to take him in service, terminated the petitioner in the intervening period w.e.f. 13-12-1990, who was not allowed to work despite his willingness and readiness to work, hence the petitioner was left with no option but to assail the termination order dated 13-12-1990 and the petitioner filed an O.A before the Administrative Tribunal which was dismissed as withdrawn on 14-3-2000 with a liberty to file afresh on the same cause of action and that the petitioner was acquitted by the Ld. Court vide its order dated 26-5-1998 and then the petitioner went to join his duties but the respondent refused to take him back in service and then the petitioner raised an Industrial Dispute and that the termination of the petitioner is illegal, void besides being inoperative and that the respondent while terminating the services of the petitioner neither served any charge sheet nor any enquiry was conducted against the petitioner and the respondent afforded no opportunity to explain his absence which was forced one and that no notice was served upon the petitioner at the time of termination nor retrenchment compensation was paid to the petitioner and that the respondent did not send the termination order to the appropriate authority which is illegal and that the petitioner could not get employment after his termination, who is still unemployed and the work with the respondent is of continuous nature and is still continuing and as such prayed for reinstatement in service with retrospective effect with continuity in service and with full back wages, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia contending that the petitioner was working as a Trainee House Keeper in Hotel Pine View Barog under the respondent corporation, who remained absent from the duty without obtaining permission and without giving any intimation from 18-6-1990 onwards and then a show cause notice was issued to the petitioner on 23-11-1990 whereby he was asked to join his duties and to explain his position in writing but the petitioner has failed to report for duties and the petitioner remained silent for thirteen years and it is not the sweet will of the petitioner to approach the court at any time which suits to him and the respondent terminated his services rightly in accordance with law and by adopting necessary prescribed procedure. It is also contended that the petitioner is estopped from taking such plea and from initiating any proceedings before this Court keeping in view his past conduct and unexplained inordinate delay and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 5.12.2005 on the pleadings of the parties:

1. Whether the services of the petitioner have been wrongly terminated by the respondent w.e.f. 13-12-1990 without complying the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? OPP
3. Relief.

5. I have heard the learned counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No. 2	Not entitled to any relief.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

7. Coming to issue no.1, the petitioner has examined three PWs in all. Ms. Asha Sharma, Senior Assistant, Pine Wood Barog stepped into the witness box as PW1, who has brought the attendance register of the petitioner & other employees. The attendance of the petitioner from 1-12-1990 to 18-2-1991 and the bill book and sale summary have already been destroyed after the completion of ten years.

8. Shri Sant Ram, Accounts Clerk of Hotel Pine Wood Barog appeared into the witness box as PW2, who has stated that he is working in HP Tourism Department since 1980 and posted at Barog since 1990 and the petitioner worked in Pine Wood for about 1 ½ years and both of them were working on the counter in shifts. They were taking the orders and issuing the bills. As per procedure regarding attendance register, the employees who were present entering P against their column and in case of leave of the employees, the entry was made by the authorities and the attendance was being marked by all the employees themselves. He does not know whether the petitioner worked at Barog, Pine Wood without being marked present.

9. Petitioner Shri Hukam Chand Verma appeared into the dock as PW3, who has stated that he was engaged as an Assistant House Keeper in HPTDC on 12.5.1986 at Wildflower Hall Chharabra and continued as such till 22.6.1990 and lastly he served Hotel Pine Wood Barog and he was involved in a false criminal case at the behest of senior officer of the HPTDC, who was arrested by the Police and then he left the job of his own due to tension of his criminal case and then he received a notice from HPTDC to resume duties within ten days on 23-11-1990 and in pursuance of that notice, he joined his duties on 29-11-1990 at Pine Wood Hotel Barog and worked as such till May, 1991 whose presence was recorded in the attendance register of the Hotel and on 13-12-1990 his services were terminated by the respondent and then he represented his Area Manager Pine Wood Barog against his termination who forwarded the same to the M.D HPTDC but no action was taken by the respondent and then he filed an O.A. before the Administrative Tribunal in the year 2000 which was subsequently withdrawn by him for want of jurisdiction. He was acquitted by the Criminal Court in 1998 and then he made a reference to the Labour-cum-Conciliation Officer who referred the matter to the Labour Commissioner and then the reference was made by the appropriate government to this Court. No notice nor compensation was paid to him and no enquiry nor charge sheet was served upon him.

10. To rebut the case of the petitioner, the respondent examined Shri Shyam Lal, Assistant Manager, Hotel Pine Wood Barog, who has stated that the petitioner was engaged as trainee house

keeper on contract basis in 1986, who remained as such till 18-6-1990 and on 23-11-1990, the petitioner was given notice by the respondent to resume his duties, who failed to join his duties and consequently the services of the petitioner were terminated on 13-12-1990. No assurance was given to the petitioner that incase the petitioner is acquitted from the criminal case, his services would be reengaged. The attendance of the workman is being recorded in the register as "p" and the services of the petitioner were terminated on account of his wilful absence.

11. The case of the petitioner is that he being a daily wages assistant house keeper having worked for more than 240 days and his termination without notice and compensation is illegal and improper and even no enquiry was conducted against him by the respondent at any point of time and no opportunity of being heard was afforded to the petitioner which is against the mandatory provisions of Industrial disputes Act, 1947 and also against the principle of natural justice and as such he is entitled to be reinstated in service with all consequential benefits.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged only on contract basis as trainee house keeper whose services were terminated after serving a notice upon him, who remained absent from the duties for which he was asked to explain his position for his wilful absence and as such his services were legally and properly terminated by the respondent. Moreover, the petitioner has not proved on record that he has completed 240 working days in twelve calendar months preceding his termination to fall this case under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed for.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner had worked in the house keeping with the respondent, who was initially engaged by the respondent on a fixed wages of Rs. 1500/- per month which fact was admitted by the petitioner in his cross examination. No doubt, the petitioner has tried to establish on record that he was engaged as an Assistant house Keeper by the respondent but the petitioner has failed to prove on record that he was engaged as an Assistant House Keeper having not proved his appointment letter or any other order with regard to his appointment with the respondent. It is also admitted by both the parties that the petitioner went on leave and after the expiry of leave period, he failed to report for duties upon which the respondent issued a show cause notice to the petitioner to resume his duties and even the petitioner did not apply for extension of his leave which fact has also been admitted by the petitioner in his cross examination. No doubt, the petitioner has tried to establish on record that he had put in 240 working days in twelve calendar months preceding his termination but the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:

"In case workman claims to have worked for more than 10 years as daily wagger. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of

termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

15. Thus, on the strength of the above cited ruling and having regard to the entire evidence on record and the fact that the petitioner has not completed 240 working days in twelve calendar months preceding his termination, hence it can safely be concluded that the services of the petitioner have been legally terminated by the respondent without complying with the provisions of section 25F of the Industrial Disputes Act, 1947 as the petitioner had not completed 240 working days in twelve calendar months preceding his termination and as such the petitioner is not entitled to the protection of section 25F of the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2

16. Since I have held under issue no.1 above, that the services of the petitioner have not been wrongly terminated by the respondent w.e.f. 13.12.1990 without notice or payment of compensation, hence the petitioner is not entitled to any service benefits as claimed by him. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 24th October, 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. No. 64 of 2006.
Instituted on 12-5-2006.
Decided on. 24-10-2009.

Pushpa Devi D/o Shri Narinder Singh Rawat, R/o Village & P.O. Jarwal, Tehsil Rohru,
District Shimla, HP. . . *Petitioner.*

VERSUS

The Divisional Forest Officer, Forest Division, Rohru, District Shimla, HP. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sanjeev Sharma, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Smt. Pushpa Devi D/o Shri Narinder Singh workman by the Divisional Forest Officer, Forest Division Rohru, District Shimla, HP without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the petitioner was initially appointed as clerk-cum-typist w.e.f. Feb. 1985 on daily wages basis in the Divisional Forest Office, Rohru on the basis of qualification and that since the date of her appointment, the petitioner always discharged her duties to the utmost satisfaction of her superiors, who never gave an opportunity of complaint and that the petitioner worked with the respondent till May, 1990 and that in the month of May, 1990, the petitioner was told by the DFO Rohru not to come for job as there was no work for her and as soon as work would be available for her she would be called to join her services, whose services were terminated by verbal order and as such the action of the respondent is illegal and against the provisions of sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 and that the petitioner had completed 240 days in each calendar year preceding her termination and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and that the petitioner after a few years came to know that the respondent has engaged several junior persons/fresh hands in their department which clearly shows that the work is available with the respondent and that the petitioner was compelled to raise the Industrial Dispute challenging her verbal termination order and the conciliation proceedings failed due to unreasonable and adamant attitude of the respondent and that as per the provisions of section 25N of the Act, the respondent was bound to seek the prior permission of the appropriate government before terminating her services but the respondent has failed to follow the procedure of law, hence the termination of the petitioner is illegal and that the state of HP has framed and notified the Industrial Disputes Rules which prescribe the procedure of retrenchment of any workman which provided under rule 81 of the Industrial Disputes Rules that it is judicially settled law that the services of the daily rated employees cannot be terminated by the oral orders without keeping in mind and ignoring the factum of long services rendered by them and as such prayed for reinstatement in service with retrospective effect with all consequential benefits including seniority, full back wages, continuity of service, regularization and promotion, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia raising preliminary objections of abandonment as the petitioner joined as clerk in the Hon'ble High Court of HP vide appointment no. HHC/Admn. To 1/21)82-1-6727 dated 8th May, 1990, having the claim time barred, the petitioner was not appointed as clerk-cum-typist, who was engaged as daily wagger till 6.5.1990 and that the services of the petitioner were never dispensed with by way of verbal order, who left the job of her own as she was appointed as clerk in the Hon'ble High Court of HP and as such the respondent has not violated the provisions of section 25F, 25G and 25H of the Industrial Disputes Act, 1947 and that the petitioner has never made any request for her reengagement to the respondent and no assurance was given to the petitioner about her reengagement and no engagement of daily wagger was made by the respondent and there is complete ban to engage the daily wagger without obtaining prior approval of the Finance

Department vide letter dated 11-7-1995. It is also contended that the respondent never terminated the services of the petitioner, who left the job of her own, hence no notice was required and no compensation in lieu of notice was to be paid and even no permission was required from the appropriate government as the petitioner left the job of her own and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 26-4-2007.

1. Whether the services of the petitioner have been illegally terminated without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP
3. Whether the present petition is not maintainable? OPR
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Coming to issue no.1, the petitioner has examined two PWs in all. Petitioner Pushpa Devi stepped into the witness as PW1, who has stated that she was appointed as clerk on daily wages in the office of DFO Rohru in Feb. 1985, who worked till May, 1990 whose services were terminated by the DFO orally with an assurance that she would be reengaged as and when the work would be available. She had worked for more than 240 days during her stay in the department. No notice nor compensation was paid to her at the time of her removal and after her removal, many persons were engaged by the DFO. She was visiting the DFO office regularly for her reengagement but her request was not accepted and after her removal, she was appointed in the Hon'ble High Court where she worked for three months on adhoc basis in 1990 as there was none in family to support her, who never worked anywhere thereafter and one Ms. Sandhira who is still working in DFO Solan is junior to her, who was engaged in 1986 and she raised the demand notice in 2005 and as such prayed for reinstatement.

9. PW2 Shri Ravinder Thakur has stated on oath that he has been knowing the petitioner since 1985 when she joined the services at Rohru and his shop is situated opposite to the DFO office and the petitioner used to visit his shop during her service. The petitioner visited his shop even after 1990 for three-four times. The petitioner visited the DFO office in connection with her

services and he had also visited the DFO office with the petitioner once or twice and the DFO assured the petitioner that she would be reengaged.

10. To rebut the case of the petitioner, the respondent examined two RW in all. RW1 Shri Bihari Lal, Supdt. DFO Office Rohru has stated that the petitioner was engaged as daily wages beldar on 1-8-1995 who worked till 6-5-1990 and then she left the job of her own and joined the services in the Hon'ble High Court of HP vide appointment letter Ex. RA. The petitioner did not inform the department of her appointment, who raised the Industrial Dispute after the period of fifteen years.

11. RW2 Ram Singh Thakur, Senior Assistant in the registry of Hon'ble High Court has proved the appointment letter of the petitioner Ex. RA. The petitioner did not appear for screening test on 7th May, 1990, who put in appearance on 8.5.1990 when she was given adhoc appointment as a clerk on 8-5-1990, who joined on 8-5-1990 and proved the joining report Ex. RA1 and the petitioner was asked vide letter dated 1-5-1990 to appear before the screening committee of Hon'ble High Court on 7.5.1990. The petitioner had applied for the post of clerk vide application which was received on 24.4.1990 by the Hon'ble High Court.

12. The case of the petitioner is that she being a daily wages clerk-cum-typist having worked for more than 240 days and her termination without notice and compensation is illegal and improper and even her juniors are still working with the respondent which is against the mandatory provisions of Industrial Disputes Act, 1947 and also against the principle of natural justice and as such she is entitled to be reinstated in service with all consequential benefits.

13. On the contrary, the respondent contends that the petitioner is not entitled to any benefit under the Industrial Disputes Act, 1947 as she abandoned the job of her own without any intimation to the respondent department as she was appointed as clerk in the Hon'ble High Court of HP and moreover, the petitioner was never appointed as clerk-cum-typist, who was appointed as daily wages beldar by the respondent, who has tried to mislead the Court by claiming herself to be clerk - -cum-typist whereas she never worked as such, who only worked as daily wages beldar at the relevant time, who raised this dispute after a lapse of fifteen years without any reasonable explanation, hence her claim is liable to be dismissed.

14. I have considered the respective contention of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, there is no dispute about the initial engagement of the petitioner but it remains a fact that she was engaged by the respondent as daily wages beldar and not the clerk-cum-typist as claimed by her in this petition as there is nothing on record which could show that she was appointed as clerk-cum-typist by the respondent as no appointment letter nor any office order in which she was asked to perform the duties of clerk-cum-typist was produced by the petitioner as there is no provision under the law to engage the class III employees without conducting any interview and without issuing any appointment letter and as such her claim to the effect that she had worked as clerk-cum-typist with the respondent is not proved on record and as such her contention is rejected as devoid of force.

16. Now, adverting to the other aspect of the case, it is also the case of the petitioner that she was orally and illegally terminated from service by the respondent without following any provisions of law but it remains a fact that the petitioner has admitted in her cross examination that she was appointed in the Hon'ble High Court on 8-5-1990 and worked for three months and no test was taken by the Hon'ble High Court during her services and she received the notice from the Hon'ble High Court after the completion of three months. Apart from it, the petitioner had worked

with the respondent till 6-5-1990 which clearly shows that the petitioner was not interested to do the job with the respondent department, who herself applied for the post of clerk in the Hon'ble High Court on 24-4-1990 as is evident from the statement of RW2 Shri Ram Singh Thakur, Senior Assistant of Hon'ble High Court, who also proved the appointment letter Ex. RA issued by the Hon'ble High Court of HP to the petitioner placed on record and the petitioner submitted her joining report vide Ex. RA1 which clearly shows the abandonment on the part of the petitioner, who herself joined the services of Hon'ble High Court knowing fully well the consequences of the same and therefore it is clear from the record of the case that the services of the petitioner were never terminated by the respondent at any point of time, who left the job of her own without intimation to the respondent department and intentionally joined the services in the Hon'ble High Court of HP and obviously therefore it does not lie in the mouth of the petitioner to say subsequently that her services were terminated orally by the respondent without any basis and foundation especially when she had worked as clerk with the Hon'ble High Court of HP for three months.

17. Now turning to the other aspect of the case, the petitioner tried to establish on record that her junior Ms. Sandhira is working with the DFO, Solan. Even if, her contention is believed to be correct even then she cannot be said to be her junior even if she was appointed in 1986 because the seniority list of the workmen is to be maintained at Divisional level but the DFO Solan is a different and separate Division and the seniority list of DFO Rohru cannot be clubbed with DFO Solan and obviously therefore this contention is of no force, hence rejected.

18. Thus, keeping in view the entire facts and circumstances of the case, I have no hesitation in coming to the conclusion that the services of the petitioner were never terminated by the respondent, who left the job of her own to join the services of clerk in the Hon'ble High Court of HP and as such the abandonment on the part of the petitioner is proved on record without any doubt. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2

19. Since I have held under issue No.1 above, that the services of the petitioner have not been wrongly terminated by the respondent without complying the provisions of Industrial Disputes Act, who herself is responsible for losing her job by joining the services in the Hon'ble High Court for three months and therefore abandoned the job of respondent, hence the petitioner is not entitled to any service benefits as claimed by her. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No. 3

20. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 24th October, 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. no. 139 of 2006.
Instituted on. 18.11.2006.
Decided on. 26.10.2009.

Parmod Kumar Sharma J-347, Railway Colony, Kalka Haryana.

.Petitioner.

VERSUS

The Director, Valiant Plast, Pvt. Ltd. Plot no.33-34, Sector-5, Parwanoo, District Solan, HP.

.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner Shri R.K Khidta, Ld. Csl.

For respondent Shri Rohit Sharma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Parmod Kumar Sharma workman by the Director, M/s Valiant Plast, Pvt .Ltd, Plot no.33-34, Sector-5 Parwanoo, District Solan HP w.e.f. 23.3.2005 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the petitioner was engaged as quality control Incharge by the respondent in the month of March, 1998 and worked as such till 22.3.2005 and that the work and conduct of the petitioner always remained upto the satisfaction of the officials of the respondent company, who had completed 240 days in a calendar year and the services of the petitioner have been orally terminated by the respondent without complying the mandatory provisions of Industrial Disputes Act, 1947 and that the petitioner visited the office of the respondent number of times for his reengagement but to no avail and then the petitioner filed a demand notice on 13.5.2005 and that the petitioner has every right to remain in the job till the date of superannuation and that the respondent has also engaged other new persons and the petitioner has not been called and even juniors to the petitioner are still continuing with the respondent company which is against the principle of last come first go and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent company is against the provisions of Industrial Disputes Act, 1947 and that the petitioner is a workman as defined in the Industrial Disputes Act as the petitioner used to work

manually with the company whose duties were supervise the work of other worker working in the company and that prior to the oral termination of the services of petitioner, the respondent company has not taken the permission from the competent authority which is mandatory required under the law and the company has also not paid the wages to the petitioner for the month of March, 2005 for which the company is bound to pay the same to the petitioner with interest and as such the termination of the petitioner is illegal, unjust, arbitrary and against the principle of natural justice and as such prayed for reinstatement on the same post w.e.f. 23.3.2005 with full back wages and other consequential benefits and also the wages for the month of March, 2005 with costs, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of having no relationship of employer and employee and maintainability. On merits, it is denied that the petitioner was ever employed with the respondent company. It is contended that the petitioner was allowed to work on trial basis for a period of seven- eight days and the petitioner used to come to the office of the respondent for few hours between 6.00 PM to 8.00 PM and then the petitioner did not turn up at the office of the respondent company, hence the question of employing the petitioner does not arise and that the petitioner was never the employee of the respondent company, hence the question of completion of 240 working days in a calendar year does not arise at all and that the question of employing new persons are not subject matter related to this case and that the petitioner never remained as employee of the respondent company and as such the provisions of Industrial Disputes Act are not attracted in this case and that the petitioner claimed his employment with the respondent company whereas, he was working with M/s Manjushree Plastics Pvt. Ltd, Parwanoo and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 3.11.2007.

1. Whether the services of the petitioner have been illegally terminated w.e.f. 23.3.2005 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .OPP.
3. Whether there is no relationship of employer and employee between the parties and the present petition is not maintainable? . . .OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.*Issue no.1 & 3.*

8. Both these issues are taken up and discussed together being interlinked and correlated for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined three PWs in all. Petitioner appeared into the dock as PW1, who has stated that he was engaged as quality control Incharge by the respondent in the month of March, 1998 and continued as such till 23.3.2005 and then his services were retrenched by the respondent without any basis and without giving notice and compensation. He had completed more than 240 days in preceding calendar year from the date of termination and after his termination, he approached the respondent for his reengagement but to no avail and proved the copy of demand notice Ex. PA and his juniors were also engaged by the respondent who are still working with the respondent. His work and conduct was found satisfactory by the respondent and the management used to issue certificates regarding his duties which are mark X1 to X79 which bears his signatures. He was deputed to many places such as Chandigarh, BSNL, Office and he is unemployed after his termination.

9. PW2 Shri Vijay Kumar, Labour Inspector-cum-Conciliation Officer, Parwanoo has proved the copy of demand notice Ex. PA and conciliation proceedings Ex. RB.

10. Shri K.P Singh, Sub Divisional Officer, Solan stepped into the witness box as PW3, who has stated that the petitioner was engaged as Lab Incharge at Valiant Plast Ltd, Parwanoo and he visited the Valiant Plast Parwanoo from 15.3.2003 to 20.3.2003 and verified the inspection under his signatures. He saw the petitioner, who was working with the Valiant Plast, Parwanoo and whenever he carried out his inspection, documents were also signed by the petitioner.

11. To rebut the case of the petitioner, the respondent examined three RWs in all. RW1 Shri S.K Shukla, SSA in the office of Commissioner Provident Fund, Shimla has stated that the petitioner is having his provident fund account in the company of M/s Manju Shree Plastics Pvt. Ltd., 20, Industrial Area Parwanoo and the company where the worker is employed subscribes the provident fund by contributing the same.

12. RW2 Shri R.S Sharma, Prop. of M/s Manju Shree Plastics Pvt. Ltd., Parwanoo has stated that the petitioner was engaged as Lab Assistant in 1995 with M/s Manju Shree Plastics Pvt. Ltd., Parwanoo, who applied with his bio-data Ex. PB and the EPF of the petitioner is being deducted every month by the company and the company also contributes in it and proved the receipt of EPF of the petitioner Ex. RC. The petitioner whenever went on leave, made an application, the copies of which are Ex. PD and PE. The applications were written by the petitioner himself who also appended his signatures on it. They used to send the petitioner to Chandigarh on duty, who was never sent to the Chandigarh for the work of M/s Valiant Plast Pvt. Ltd., Parwanoo at any point of time and their company is having no concern with M/s Valiant Plast Pvt. Ltd., Parwanoo and the petitioner remained their employee and has withdrawn his EPF amount which was deposited by them.

13. RW3 Shri Gurcharan Singh, Director of M/s Valiant Plast Pvt. Ltd. has stated that the petitioner was never the employee of their company and never issued any appointment letter to the petitioner and no EPF of the petitioner is deducted from their company and as such the claim of the petitioner is false.

14. The case of the petitioner is that he being the employee of M/s Valiant Plast Pvt. Ltd., Parwanoo having worked as quality control Incharge w.e.f. March, 1998 to 22.3.2005 when his services were illegally terminated by the respondent without any reason and without complying

with the provisions of Industrial Disputes Act, 1947 and even juniors to him are still working with the respondent and further no notice nor any compensation was paid to him at the time of his retrenchment and as such he is entitled to be reinstated in service with all consequential benefits.

15. On the contrary, the respondent contends that the petitioner is not entitled to any benefit under the Industrial Disputes Act, 1947 as there is no relationship of employee and employer between the parties and the petitioner was never engaged by the respondent company at any point of time and as such the question of termination and retaining juniors does not arise at all, hence the claim of the petitioner is liable to be dismissed.

16. I have considered the respective contention of both the parties and have scrutinized the record of the case.

17. After the close scrutiny of the record of the case, the petitioner has failed to prove on record that he was engaged as Quality Control Incharge by the respondent company at any point of time as no appointment letter nor any order in this regard was produced by the petitioner before the court and even the petitioner has admitted in his cross examination that he had withdrawn his EPF amount being the employee of M/s Manju Shree Plastic, Pvt. Ltd. Parwanoo meaning thereby that the petitioner was the employee of M/s Manju Shree Plastic, Pvt. Ltd. Parwanoo and not the employee of respondent company, who was never engaged by the respondent company. Moreover, RW1 Shri S.K Shukla has categorically stated on oath that the company where the worker is employed subscribes the provident fund by contributing the same and even RW3 R.S Sharma Managing Director and Prop. of M/s Manju Shree Plastic, Pvt. Ltd. Parwanoo has admitted the petitioner to be his employee. No doubt, the petitioner has tried to establish on record that the respondent company and M/s Manju Shree Plastic, Pvt. Ltd. Parwanoo are sister concern companies but there is nothing on record which could show that both the companies are sisterly concern and no office order or any other document showing this fact has been placed on record by the petitioner and even the Prop. of both these companies as RW2 and RW3 have categorically stated that their companies are not the sister concerns and obviously therefore, it can safely be concluded that both these companies are not the sister concerns. Moreover, it is fully proved on record that there is no relationship between the petitioner and the respondent company as of employee and employer and obviously therefore no protection of section 25F of the Industrial Disputes Act, 1947 can be granted to the petitioner as he has failed to prove on record that he was the workman of the respondent company at any point of time and therefore I have no hesitation in coming to the conclusion that the petitioner was never engaged by the respondent company and it does not lie in the mouth of the petitioner to claim having worked with the respondent company especially when he has failed to prove the factum of employment with respondent company on record. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue no.2

18. Since I have held under issue no.1 & 3 above that the services of the petitioner have not been wrongly terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 and the petitioner is not proved to be the workman of the respondent company. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 26th October, 2009 in the presence of parties counsels.

J. S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. No. 168 of 2003.
Instituted on. 17.5.2003.
Decided on. 28.10.2009.

Pratap Singh S/o Shri Mahant Ram R/o Village & P.O Kot, Tehsil Sarkaghat, District Mandi, HP C/o Gopal Building, Chalunti Road, Sanjauli, Shimla-6. . .Petitioner.

VERSUS

The Managing Director, HRTC, Shimla-3, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Bhupinder Thakur, Ld. Csl.
For respondent: Shri Rajesh Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Pratap Singh S/o Shri Mahant Ram, Part time worker by the Managing Director, HRTC Shimla-3 w.e.f. 22.6.2001 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that he was initially engaged as daily wages class-IV in the month of Feb. 1997 in HRTC Rest House, Tara Devi and worked till 23.6.2001 and during his service tenure, the petitioner had completed 240 days of service many times as enshrined in the Industrial Disputes Act, 1947 for the application of section 25F of the Act and the services of the petitioner were dispensed with vide verbal orders without complying with the mandatory provisions of law and that the action of the respondent dispensing with the services of the petitioner without giving any notice under section 25F of the Industrial Disputes Act and without paying any compensation is illegal and liable to be quashed and set aside and even the respondent has violated the provisions of section 25(VI), 25B, 25G and 25H of the Act by engaging fresh persons ignoring the claim and seniority of the petitioner and that while dispensing with the services of the petitioner, the respondent has not followed the principle of last come first go and as such prayed for reinstatement in service with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner was engaged for a specific period of 89 days on contract basis. On merits, it is contended that the petitioner was engaged as part time class IV worker on contract basis for a specific period of 89 days in Feb. 1997 at a fixed remuneration of Rs. 1000/-, who used to be kept for a specific period of 89 days as and when the work was available with the respondent at various places and after the expiry of 89 days, services of the petitioner were automatically terminated. It is denied that the petitioner had completed 240 days, hence the section 25F of the Industrial Disputes Act, 1947 is not applicable in this case whose services were terminated on 26.6.2001 on the expiry of the period of 89 days and that the services of the petitioner were dispensed with on the basis of terms and conditions of his engagement. It is also denied that after the disengagement of the petitioner many fresh persons have been engaged by the respondent as the respondent corporation is running in heavy losses and as such is not in a position to engage any one and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 23.11.2005.

1. Whether the service of the petitioner has been terminated in violation of the provisions of the Industrial Disputes Act, 1947? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? . . .OPP.
3. Whether the petition in the present form is not maintainable? . . .OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination my findings on the aforesaid issues area as under:

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue no.1

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated on oath that he was engaged as peon by the respondent on 2.1.1997 at Tara Devi and worked till 22.6.2001. He was removed from service on 22.6.2001 orally. No notice nor compensation was paid to him and his juniors were working at that time and two persons were appointed as conductors. He had worked for more than 240 days in a calendar year and as such his removal is illegal.

9. To rebut the case of the petitioner, the respondent examined Shri N.C Sharma, R.M HRTC, Shimla, who has stated that he has been authorized to make the statement on behalf of the respondent vide letter Ex. RA. The petitioner was engaged as part time class IV employee in Feb. 1997 for 89 days, who was engaged according to the requirement of the work as per his engagement letters Ex. R1 to Ex. R9. The petitioner was engaged for a period of one year in August, 2000 and prior to it, he was engaged only for 89 days with breaks at the salary of Rs. 1000/- per month and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being a peon having worked for more than 240 days in a calendar year and his termination without notice and compensation is illegal and moreover his juniors are still continuing with the respondent corporation as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the provisions of Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination and no junior to the petitioner was engaged by the respondent at any point of time and as such the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as part time worker i.e peon by the respondent corporation from 2.1.1997 to 22.6.2001 as is evident from the detail of month wise wages placed on record. No doubt, the petitioner could not prove on record that as to how many days he had worked with the respondent corporation in twelve calendar months preceding his termination but there is information sought under the Right to Information Act which could show that the petitioner had worked for more than 240 working days in twelve calendar months preceding his termination as is evident from the detail of month wise wages and the information was sent by the Divisional Manager, HRTC, Shimla dated 13.6.2005 placed on record. It is significant to note that the petitioner had worked for 173 days in 2001 and 357 days in 2000 and when we club both the years and calculate the month wise working days of the petitioner from the date of termination, it is clear that the petitioner had completed more than 240 working days in the year 2000-2001. No doubt, the respondent has tried to establish on record that the petitioner was engaged for specific period and for specific work for 89 days only from time to time, who was a casual worker, who had worked with the respondent as per the requirement of work but I find no force in this contention as the petitioner was appointed as part time worker on contract basis for 89 days which was renewed from time to time as is evident from Ex. R1 to Ex. R9 placed on record. It is clear that the respondent has tried to take the benefits of fictional breaks which was given to the petitioner after the expiry of 89 days but it is well settled by their lordships of *Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl*, (2006) 9 SCC 434. that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus, it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947.

14. Similarly our own Hon'ble High Court of HP incase titled *Shri Manoj Kumar Sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007* has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the

rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days after giving him fictional break, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. R1 to Ex. R9 placed on record. Thus, it is fully proved on record that even after giving fictional breaks, the petitioner has completed more than 240 working days in the year 2000-01 being twelve calendar months preceding his termination as is evident from letter dated 13.6.2005 sought under the Right to Information Act by the petitioner. This practice of fictional breaks has been adopted by the respondent to defeat the provisions of section 25F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner has completed more than 240 working days before his termination was affected and his termination without notice or compensation in lieu thereof under section 25F of Industrial Disputes Act, 1947 is illegal and unjustified. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

Issue no.2

15. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue no.3.

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 28th October, 2009 in the presence of parties counsels.

J. S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. no. 13 of 2006.
Instituted on. 20.2.2006.
Decided on. 29.10.2009.

Gopal Singh S/o Shri Khiunu Ram R/o Village Graon, P.O Bharara, Tehsil Sunni, District Shimla, HP. .*Petitioner.*

VERSUS

The Executive Engineer, Electrical Division, HPSEB Sunni, District Shimla, HP. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner Shri J.R Sharma, Ld. Csl.
For respondent Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Gopal Singh S/o Shri Khiunu Ram workman by the Executive Engineer, Electrical Division, HPSEB Sunni, District Shimla, HP w.e.f. 16.4.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the petitioner was engaged as beldar in June, 1997 and continued to work till March, 1998 with fictional breaks, who worked with full sincerity and devotion but the respondent engaged fresh persons in place of the petitioner and that the services of the petitioner were orally terminated by the respondent Board in March, 1998 and the petitioner challenged his oral termination before the Administrative Tribunal and during the pendency of the O.A, the Tribunal has issued interim directions whereby the petitioner was ordered to be reinstated as beldar and as such the petitioner was reinstated by the respondent as beldar in November, 1998 and the O.A was finally disposed of for want of jurisdiction and the services of the petitioner were wrongly terminated by the respondent on 16.4.2002 and that the petitioner is entitled for the protection of Rule 14(2) of the Standing Orders of HPSEB and that the respondent Board at the time of terminating the services of the petitioner has failed to appreciate that S/Shri Mohinder Kumar and Gian Chand juniors to the petitioner have been retained by the respondent which is in violation of the principle of first come last go and that the termination of the petitioner is also void abinitio as the petitioner has right vested in his capacity as workman by the Industrial Disputes Act, 1947 and no compliance of the Industrial Disputes Act, 1947 has been done by the employer and as such the termination of the petitioner is totally arbitrary, discriminatory and illegal and as such prayed for reinstatement with all consequential service benefits including full back wages by revoking the illegal order of termination dated 16.4.2002, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objection of maintainability, having no legal enforceable cause of

action, having hit by the vice of delay and latches and that the petition is not properly instituted and constituted. On merits, it is contended that the petitioner was engaged on muster roll basis as daily waged beldar w.e.f. 1.6.1997 and worked as such upto 21.3.1998 and that the petitioner was engaged against casual nature of work during the year June, 1997 to March, 1998 with interruptions at his own accord to complete the specific work and on the completion of the work, the services of the petitioner automatically came to an end and no fresh person was engaged in place of the petitioner and that the petitioner chose the wrong forum, who was reengaged on the directions of the Administrative Tribunal and the disengagement of the petitioner from service on 16.4.2002 was correct and that the petitioner had not completed 240 days upto 21.3.1998 and the period from 9.11.1998 to 21.4.2002 is the interim/stay period which is not countable towards his seniority. It is denied that junior to the petitioner has been retained by the respondent and that no right of the petitioner has been violated, who was engaged only for specific period to complete the specific work and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 28.3.2007.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .OPP.
3. Whether the present petition is not maintainable as it does not cover under Industrial Disputes Act, 1947? . . .OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service alongwith seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue no.1

8. Coming to issue no.1, the petitioner has examined himself as PW1, who has stated that he was engaged as daily wages beldar by HPSEB Sub Division Sunni in June, 1997 and worked as such till March, 1998 and then he was terminated from service. He had completed 240 working days in a calendar year preceding his termination. His juniors S/Shri Mohinder Kumar, Gurdail, Gian Chand, Om Parkash and Kanshi Ram who were appointed in 1999 are still working with the

respondent Board and are made regular. No notice nor compensation was given to him at the time of his termination. He had also filed a petition before the Administrative Tribunal in which the stay was granted in his favour and he was reengaged by the respondent in November, 1998 and worked till 16.4.2002. He had completed 240 working days in every calendar year preceding his termination and proved the copy of O.A Ex. PA, reply Ex. PB, rejoinder Ex. PC and the copy of stay order dated 9.11.1998 Ex. PD and the subsequent order dated 18.3.2002 Ex. PE and termination letter dated 16.4.2002 Ex. PF and the documents of the respondent show that he is still working with the respondent whereas he was terminated from service and as such prayed for reinstatement with all consequential benefits including back wages.

9. To rebut the case of the petitioner, the respondent has examined RW1 Er. A.C Brice, Senior Executive Engineer, HPSEB, Division Sunni, who has stated that the petitioner was engaged as T-mate/beldar on daily wages basis on 1.6.1997 and continued as such till 21.3.1998, who had worked only for 128 days in 1997-98, who was irregular in his duties and no junior to the petitioner is working with the respondent department. The duties of the petitioner were to stretch the electricity lines and to erect poles, who was engaged for specific work and for specific time and there is no work with the department for the petitioner.

10. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days and his termination without notice and compensation is illegal and improper and even juniors to him are still working with the respondent which is against the mandatory provisions of Industrial Disputes Act, 1947 and as such he is entitled to be reinstated in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on temporary basis as T-mate/beldar, who had not completed 240 working days in twelve calendar months preceding his termination and moreover the petitioner was engaged for specific work and for specific time and no junior to the petitioner is working with the respondent, hence the petitioner is not liable to be reinstated in service.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar w.e.f. June, 1997 and continued as such till March, 1998 which fact has not been disputed by the respondent. No doubt that the petitioner has tried to establish on record that he had completed more than 240 working days in twelve calendar months preceding his termination i.e till March, 1998 but there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding his termination as no record was summoned by the petitioner from the office of the respondent to show that how many days he had worked with the respondent. Here I am fortified with a view taken by our own Hon'ble High Court incase titled as *State of Himachal Pradesh Vs. Sohan Lal* reported in latest HLJ 2007 (HP) 776 in which it was held that :

“Industrial Disputes Act, 1947, Section 25F. Counting of 240 days for compliance of section 25F. 240 days has to be calculated preceding the date of retrenchment during 12 calendar months and not a year. Retrenchment was void ab-initio for non compliance with the mandatory provisions of section 25F.”

In the instant case, the petitioner has failed to prove on record that he had worked for 240 working days in twelve calendar months preceding his termination i.e till March, 1998, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947.

14. Now, turning to the other legal aspect of the case, it is borne out from the record that the petitioner was engaged by the respondent Board as beldar, who worked with the respondent till March, 1998. Apart from it, the petitioner has proved on record that his juniors are still working with the respondent Board. It is significant to note that RW1 Er. B.R Brice has admitted in his cross examination that on 9.3.1999, the respondent engaged S/Shri Mohinder Kumar and Gian Chand as daily wages beldar, who are still working with the respondent meaning thereby that S/Shri Mohinder Kumar and Gian Chand were engaged by the respondent Board after the termination of the petitioner and as such they are juniors to the petitioner. Since it is proved on record that the juniors to the petitioner are still continuing with the respondent Board and in the instant case it is immaterial even if the petitioner has completed 240 working days in twelve calendar months preceding his termination especially when it is proved on record that the juniors to petitioner are still continuing with the respondent Board. Thus there is utter violation of sections 25G & 25H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HJLJ 2007 (HP) 903*, in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. No doubt that the respondent has tried to establish on record that the petitioner had completed 240 working days on the directions/interim orders passed by the Administrative Tribunal which cannot be counted towards his seniority and having completed 240 working days in twelve calendar months preceding his termination. Even if the plea of the respondent is to be taken into consideration even then the juniors of the petitioner are proved to be working with the respondent Board. Thus, having regard to entire evidence on record and in view of the fact that the juniors to the petitioner S/Shri Mohinder Kumar and Gian Chand are still working with the respondent Board as admitted by RW1 Er. B.R Brice which is against the principle of natural justice and the principle of first come last go and as such I have no hesitation in coming to the conclusion that the juniors to petitioner are still working with the respondent Board and as such the termination of services of petitioner by the respondent without complying with the provisions of I.D Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue no.2.

16. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following with the provisions of Industrial Disputes Act, 1947 is improper, unjustified and illegal, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity from the date of termination w.e.f. 16.4.2002. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I have scrutinized the record of the case and observed that the petitioner being daily wages beldar whose services have been illegally terminated by the respondent and as such the case of the petitioner falls under the Industrial Disputes Act, 1947 and the respondent is legally bound to follow the principle of natural justice and the principle of last come first go which was not followed by the respondent at any point of time. In view of above observations, I am of the firm opinion that the present petition is perfectly maintainable in the present form and the case of the petitioner is covered under the provisions of Industrial Disputes Act 1947. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated in service forthwith alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 29th October, 2009 in the presence of parties counsels.

J. S MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref no. 141 of 2006
Instituted On. 18.11.2006.
Decided On. 30.10.2009.

Rakesh Kumar, S/o Shri L.N Sharma, C/o Shri Surinder Thakur, General Secretary,
Bhartiya Mazdoor Sangh (HP) Om Bhawan, Himland Shimla-1 . .Petitioner.

VERSUS

1. The Superintending Engineer, 4th Circle, HPPWD, Winter Field Shimla-3.
2. The Executive Engineer, Shimla Division no.II HPPWD, Shimla-4. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the demand raised by General Secretary, Bhartiya Mazdoor Sangh (HP) through their demand notice dated 1.11.2004 (Copy enclosed) from the (1) Superintending Engineer, 4th Circle, HPPWD, Winter Field Shimla-3 (2) Executive Engineer, Shimla Division no.II HPPWD, Shimla-4 to promote Shri Rakesh Kumar S/o Shri L.N Sharma daily wages beldar as Surveyor from the date of his appointment is proper and justified? If yes, what relief of service benefits the aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner is aggrieved by the inaction on the part of the respondent department whereby the petitioner has not been given muster roll of surveyor despite of his qualification, eligibility and entitlement for the same on the ground that the department is extracting work of surveyor from the petitioner for years together but paying him wages of beldar which is illegal, arbitrary and against the norms of labour law legislation and the petitioner has never worked as beldar from the date of his appointment, who was working as surveyor since March, 1994 when he was engaged with the department and that the petitioner was appointed as daily wages surveyor in the month of March, 1994 but is being paid the wages of beldar and the non issuing of muster roll of surveyor was brought in the notice of competent authority to provide the muster roll of the surveyor as the petitioner is performing the duties of surveyor in the department and the petitioner made written representation vide annexure P1 and the copy of communication is annexure P2 and that the petitioner has made representation on the basis of work assigned and taken from him which is in the knowledge of the department and even the petitioner had passed National Trade Certificate in the trade of surveyor from ITI Shimla, the copy of which is annexure P4 and the copy of matriculation certificate is annexure P5 and that despite the recommendation for the grant of muster roll of surveyor by his superior, no action was taken by the respondent no.1 and new muster roll of surveyor was issued in favour of Shri Vinod Kumar. The petitioner again represented his case to the Chief Engineer PWD for imparting justice to him and to issue muster roll of surveyor to the petitioner instead of employing new hands, the copy of which is annexure P6 and second representation of the petitioner is annexure P7 and that the petitioner also represented his case to the PWD Minister vide annexure P8 and the copy of communication dated 2.4.1997 is annexure P9 and that it is strange enough that the Assistant Engineer, Sub Division Jutogh vide his communication dated 11.6.1997 has sent report that the petitioner is working as daily wages worker and is performing the duties of surveyor but being paid as beldar, the copy of which is annexure P10 and that the respondent no.2 vide communication dated 14.7.1997 has again submitted to the respondent no.1 vide communication 14.7.1997 that the petitioner has been performing duties of surveyor w.e.f. March, 1994 and the permission to give him muster roll of surveyor be granted but the petitioner was never granted the muster roll as per his working as surveyor by respondent no.1 and then the petitioner filed an O.A vide which he was allowed to perform the duties of surveyor which he was performing in the past, the copy of which is annexure P12 but later the O.A was not decided on merits and returned having no jurisdiction in the matter of daily wages and dismissed as withdrawn and that the respondent department was having the work of surveyor available with them and Shri Vinod Sharma was issued muster roll of surveyor for 89 days which was later on changed from work inspector and as such the appointment of new hand by the department as surveyor when the petitioner was available and was doing the job of surveyor with experience and qualification and as such the action of the respondent department is wrong, illegal, arbitrary and against the fundamental rights of the petitioner as enshrined in the Constitution of India and that the petitioner belongs to a poor family and is in dire need of service and the petitioner is not in the position to bargain with the Mighty Govt. and therefore subjected to

the expectations and mental harassment which action of the respondent is against the labour law legislations which protects the worker and should be paid as per the work being extracted from him for which he was deployed by the department and as such prayed that the muster roll of surveyor be issued to the petitioner and the wages applicable to the category of surveyor be paid to the petitioner from the date of his initial appointment, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and estoppel. On merits, it is denied that the petitioner is aggrieved in any manner on account of inaction of respondents. It is also denied that the petitioner is entitled to be issued the muster roll of surveyor. It is contended that the petitioner was initially appointed as beldar and since his appointment, he had been discharging his duties of beldar and the respondents never made the petitioner to discharge the duties of surveyor and that the petitioner has failed to substantiate his claim with any documentary evidence to the effect that he was engaged as daily wages surveyor by the respondents, who was engaged as daily wages beldar and as such the petitioner is not entitled to be issued the muster roll of surveyor and the appointment of surveyor is governed by the statutory rules and without complying the provisions of statutory rules, no appointment can be made and that the representations of the petitioner have rightly been rejected by the respondent and since the petitioner was not entitled to be appointed as surveyor, hence his representations were liable to be rejected and as such there has been no violation of articles 14,16 and 39 of the constitution of India and therefore prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 31.10.2007 on the pleadings of the parties.

1. Whether the petitioner is entitled for the promotion as surveyor as alleged? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . .OPP.
3. Whether the claim in the present form is not maintainable? . . .OPR.
4. Relief.

6. I have heard the learned AR for the petitioner and learned DDA for respondent and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue No.3	Not pressed.
Relief.	Reference answered in negative per operative of the award.

REASONS FOR FINDINGS.*Issue no.1*

8. In order to prove this issue, the petitioner has examined two PWs in all. Petitioner Shri Rakesh Kumar stepped into the witness as PW1, who has stated that he was engaged as beldar on daily wages basis on 23.3.1994 by the respondent and continued as such till date. He is working as surveyor from the very beginning till date, who had not done the work of beldar at any point of time, who represented to the respondents by representation Ex. PA vide which he claimed the salary of surveyor which was replied vide letter Ex. PB and even the Assistant Engineer, Jutogh has confirmed that he is working as surveyor and not the beldar vide letter Ex. PC. He is qualified surveyor having done the diploma in 1991-93 and his certificate is Ex. PD. Again he represented to the S.E Shimla on 24.2.1997 vide Ex. PE but no action was taken on his representation and then he represented on 4.3.1997 to the S.E through Assistant Engineer vide Ex. PF but without effect and the Engineer in Chief had written to the S.E to examine his case and the XEN Shimla has sought permission from S.E Shimla to pay salary of surveyor to him which is mark A. He also filed a petition before the Administrative Tribunal for the salary of the surveyor vide Ex. PG. One Shri Vinod Kumar was engaged as works inspector and then appointed as surveyor by the respondents and similarly several persons were made as work inspector, complaint clerk and as such prayed that he may be allowed to be given salary of surveyor in the pay scale of surveyor since 1994.

9. PW2, Er. Ramesh Chander Dheer, Additional Assistant Engineer, Jutogh Sub division, Shimla has stated that the petitioner was appointed as beldar on daily wages, who was made regular in the year 2006. The petitioner has been working as surveyor since his engagement as beldar but he is getting the salary of beldar and the petitioner is qualified surveyor, who was working under him since 2006.

10. To rebut the case of the petitioner, the respondent has examined Er. D.P Thakur, Assistant Engineer, Jatogh Sub Division, who has stated that the petitioner was engaged as beldar on daily wages on March, 1994 and continued as such till December, 2006 and then the petitioner was made regular beldar in December, 2006, who was never engaged as surveyor by the department at any point of time nor he was paid the wages of surveyor, hence the claim of the petitioner is false as he never worked as surveyor with the respondents.

11. Shri J.C Bhardwaj, learned AR for the petitioner has vehemently argued at the very out set that since he petitioner has been working as surveyor from the date of his initial appointment with the respondent but he is being given wages of beldar who was neither promoted nor paid the wages of surveyor which is illegal and against the provisions of equal pay for equal work and as such the petitioner is entitled to be promoted as surveyor.

12. On the contrary, Shri Jagdish Kanwar, learned DDA for respondent has controverted the arguments of Shri Bhardwaj and submitted that the petitioner was never engaged as surveyor but he was engaged as daily wages beldar, hence the petitioner cannot be promoted as surveyor nor he may be given the wages as given to the surveyor. He has further argued that the petitioner was made regular as beldar, who was never promoted as surveyor at any point of time nor he was asked to perform the duties of surveyor by the respondents and as such the claim of the petitioner is liable to be dismissed.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages beldar and made regular as beldar by the respondent department on the

basis of which he submitted his joining report as beldar but his case is that he is working as surveyor with the respondent department but he is getting the wages of beldar. No doubt, PW2, Er. Ramesh Chander Dheer, AAE Jatogh Sub Division has stated that the petitioner has been working as surveyor since his engagement as beldar does not entitle him to become the surveyor as the petitioner was never engaged as beldar who is also getting the salary of beldar though the petitioner is qualified surveyor. On the other hand, RW1 Er. D.P Thakur, Assistant Engineer, HPPWD, Sub Division, Jatogh has denied that the services of the petitioner was taken as of surveyor as Shri Jeet Ram was the permanent surveyor at the relevant time however, he has admitted that the petitioner is a qualified surveyor. It is significant to note that the petitioner has relied upon the ruling of *Hon'ble High Court of HP reported in CWP no. 448 of 2005 dated 24th July, 2008 case titled as HP Housing and Urban Development Authority Vs. Nisha Sharma & others* in which it was held that:-

“It is more than ample clear that the respondents were working as tracer Draughtsman. They could therefore not have been denied the minimum wages fixed for a tracer draughtsman.”

I have scrutinized the ruling of Hon'ble High Court cited by the petitioner but the ratio of the ruling is not applicable to the present facts and circumstances of the case as Hon'ble High Court has given the wages to the workmen who worked as tracer draughtsman proved on record. In the instant case, the petitioner claims the post of surveyor in order to show on record that he has been working as surveyor but was engaged as beldar on daily wages basis and was made regular by the respondent as beldar. No doubt, PW2 Er. Ramesh Chander Dheer has stated that the petitioner has been working as surveyor but when RW1 Er. D.P Thakur, Assistant Engineer of the petitioner appeared in the witness box has denied that the services of the petitioner were taken of surveyor. It is significant to note that the petitioner is claiming the promotion of surveyor from the date of his engagement, who never claimed the wages for the same in his claim nor there is reference to this effect for payment of wages of surveyor and since there is specific R&P Rules (Recruitment and Promotion Rules) for the post of surveyor in the State of Himachal Pradesh, hence the petitioner cannot be promoted as surveyor, who was engaged as daily wages beldar and made regular as beldar who never protested when he was made regular as beldar by the respondents at any point of time and obviously therefore, I have no hesitation in coming to the conclusion that the petitioner is not entitled to the promotion of surveyor and moreover this Court has no powers to go beyond the terms of the reference. Accordingly, issue no.1 is decided in favour of respondents and against the petitioner.

Issue No.2.

15. Since I have held under issue no.1 above that the petitioner is not entitled to be promoted as surveyor from the date of his initial engagement when he was engaged as beldar on daily wages, hence the petitioner is not entitled to any benefits of surveyor. Accordingly, issue no.2 is decided in favour of the respondents and against the petitioner.

Issue No.3.

16. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. Accordingly, this issue is disposed of as having not pressed.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered

in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of October 2009 in the presence of parties counsels.

J. S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref no. 75 of 2005
Instituted On. 8.8.2005.
Decided On. 30.10.2009.

1. Daulatu Ram S/o Shri Karmu Ram R/o VPO, Gandhoori, Sub Tehsil Noherdhar, District Sirmour, HP.
2. Kanhu Ram S/o Shri Dhonu Ram, R/o VPO, Gandhoori, Tehsil Sangrah, District Sirmour, HP.
3. Smt. Maya W/o Shri Chuni Lal R/o VPO Gandhoori, Tehsil Sangrah, District Sirmour, HP.
4. Hirda Ram S/o Shri Jiwan Singh, R/o Village Tarna, P.O Devena, Tehsil Sangrah, District Sirmour, HP.
5. Balwant Singh S/o Shri Jiwan Singh R/o Village Mothli, Tehsil Sangrah, District Sirmour, HP.
6. Guman Singh S/o Shri Amar Singh R/o VPO Panooh, District Sirmour, HP.
7. Sant Ram S/o Shri Amer Singh R/o Village Bohred, P.O Koti-Bouch, Sub Tehsil Nohradhar, Tehsil Shillai, District Sirmour, HP. . *Petitioners.*

VERSUS

The Executive Engineer, HPPWD, Division Sangrah (Haripurdhar) District Sirmour, HP.
. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri A.K Gupta, Ld. Csl.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of (1) Shri Daulatu Ram S/o Shri Karmu Ram (2) Shri Kanhu Ram S/o Dhenu Ram (3) Smt. Maya W/o Shri Chuni Lal (4) Shri Hirda Ram S/o Shri Jiwan Singh (5) Shri Balwant singh S/o Shri Jiwan Singh (6) Shri Guman

Singh S/o Shri Amar Singh and Shri Sant Ram S/o Shri Amar Singh workmen by the Executive Engineer, HPPWD Division Sangrah (Haripurdhar), District Sirmour, HP w.e.f. year, 1989, 1989, 1989, 1989, 1984, 1988 and 1988 respectively without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above aggrieved workmen are entitled to?"

2. The petitioners have filed a claim asserting therein that the petitioners were serving under the HPPWD Division Haripurdhar/Sangrah and their dates of engagement and disengagement have been mentioned in the reference whose services were illegally terminated by the respondent and that no notice nor any compensation was paid to the petitioners while disengaging their services which amounts to retrenchment under section 200 of the Industrial Disputes Act, 1947 and the petitioners have completed 240 days of service in a calendar year for the application of section 25F of the Industrial Disputes Act and that the persons who were serving alongwith the petitioners and junior to them have been retained in service and their services have not been disengaged and that while retrenching the services of the petitioners, the principle of last come first go was not followed by the respondent and that even fresh recruitments have been made by the respondent which is against the provisions of section 25H of the Industrial Disputes Act, 1947 and that the retrenchment is not sustainable in the eyes of law as lot of work is available in the Division and as such prayed for the reinstatement in service with all benefits incidental thereof including seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioners, which filed reply interalia raising preliminary objections of claim having barred by limitation. On merits, it is contended that serial no. 1 to 7 joined in the department on daily wages basis on 16.9.1983, 1.2.1982, 21.1.1983, 10/1982, 1.8.1982, 10/1988, 10/1988 respectively and all the petitioners left the daily wages service as their own will on 31.5.1990, 31.3.1989, 26.4.1989, 31.10.1990, 31.10.1983, October, 1996 and Jan. 1998 respectively without intimating the respondent and that since the services of the petitioners were never terminated by the respondent, hence there was no need of issuance of notice under section 25F of the Industrial disputes Act, 1947 and none of the petitioners have completed 240 working days in a preceding calendar year and that the petitioners were never retrenched by the respondent, who left the job of their own and that after abandonment, the petitioners have never approached the respondents for their reengagement and as such prayed for the dismissal of the petition.

4. No rejoinder filed. The following issues were framed by this Court on 24.11.2006 on the pleadings of the parties.

1. Whether the services of the petitioners have been terminated by the respondent without complying with the provisions of I.D Act, 1947? If so, its effect?
..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioners are entitled to?
..OPP.
3. Whether the present petition is barred by limitation and is not maintainable?
..OPR.
4. Relief.

5. I have heard the learned Counsel for the petitioners and learned DDA for respondent and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	No.
Relief.	Reference answered in negative per operative of the award.

REASONS FOR FINDINGS.

Issue no.1

7. In order to prove this issue, the petitioners have examined Shri Daulatu Ram as PW1, who has stated on oath that he was engaged as daily wages beldar by the respondent in the year 1987 and worked as such till 1990 when his services were disengaged. He and other petitioners had completed 240 working days in a calendar year and no notice nor compensation was paid to them at the time of their retrenchment and then they met the XEN regarding their reengagement but nothing has been done and they did not abandon the job themselves and they are not gainfully employed after their retrenchment.

8. To rebut the case of the petitioners, the respondent has examined Er. Kushal Chand as RW1, who has stated that the petitioners were engaged as beldar in 1982-83 and continued as such till 1990 to 1998 and proved the mandays charts Ex. RA to Ex. RF and then they abandoned the job of their own, who were never terminated by the respondent and as such the claim of the petitioners is false and no junior to the petitioners was engaged nor continuing in service.

9. The case of the petitioners is that they being the daily wages beldar having worked for more than 240 working days in each calendar year preceding their termination whose services were illegally terminated by the respondent without any notice and without payment of compensation and even juniors to them are still working with the respondent, hence they are liable to be reinstated in service alongwith all consequential benefits including back wages.

10. On the contrary, the respondent contends that the petitioners were not entitled to any service benefits under the Industrial disputes Act, 1947 as they left the job of their own without any intimation to the respondent department, who were never terminated by the respondent and even no junior to the petitioners has been retained/engaged by the respondent and they have not completed 240 working days in twelve calendar months preceding their abandonment, hence the claim of the petitioners is liable to be dismissed.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the petitioners had worked with the respondent as on daily wages beldars. Petitioner Shri Daultu Ram had worked w.e.f. 1982 to May, 1990, petitioner Shri Kankoo Ram had worked w.e.f. 1982 to March, 1989, petitioner Shri Hirda Ram had worked from Jan. 1983 to April, 1989, petitioner smt. Maya had worked from October, 1982 to October, 1990, petitioner Shri Balwant had worked from August, 1984 to November, 1983 and petitioner Shri Guman Singh had worked from November, 1988 to Jan. 1998 as is evident from the mandays chart of all the petitioners Ex. RA to Ex. RF placed on

record. No doubt that the petitioners have tried to establish on record that they have completed 240 working days in twelve calendar months preceding their termination but there is nothing on record which could show that the petitioners have completed 240 working days in twelve calendar months preceding their termination in order to fall their case under section 25F of the Industrial Disputes Act, 1947.

13. On the other hand, the respondent has proved on record that none of the petitioner has completed 240 working days in twelve calendar months preceding their abandonment by proving the detail of working days of the petitioners Ex. RA to RF. Now, it is crystal clear on record that the petitioners have not completed 240 working days in twelve calendar months preceding their termination, hence the case of the petitioners does not fall under section 25F of the Industrial Disputes Act, 1947 and as such they are not entitled for the protection of Section 25F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amarsingh* in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Now, adverting to the other aspect of the case, the petitioners have tried to establish on record that the respondent retained their juniors in the service while their services were terminated. I find no force in this contention as the petitioners have failed to prove on record as to when their juniors joined the services of respondent department as daily wages beldar and who are they still continuing in services especially when it is not proved on record that the juniors are still continuing in service with the respondent and as such this contention has no force and is hereby rejected.

15. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioners have not completed 240 working days in twelve calendar months preceding their termination and no junior to the petitioners was retained by the respondent department. Accordingly, issue no.1 is decided in favour of respondent and against the petitioners.

Issue no.2.

16 Since I have held under issue no.1 above that the services of the petitioners were not illegally terminated by the respondent, hence the petitioners are not entitled to any relief. Accordingly, issue no.2 is decided against the petitioners and in favour of the respondent.

Issue no.3.

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court in a case reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Another.* in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioners fails and is hereby dismissed as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of October 2009 in the presence of parties counsels.

J. S MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref no. 49 of 2007.
Instituted on 25.6.2007.
Decided on. 30.10.2009.

Amar Singh S/o Shri Nokh Ram R/o Village Shakrindi, P.O Jassal, Tehsil Karsog, District Mandi, HP. . *Petitioner.*

Vs.

The Divisional Forest Officer, Wild Life, Division, Shimla, HP. . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Jeevesh Sharma, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Amar Singh S/o Shri Nokh Ram workman by the Divisional Forest Officer, Wild Life Division, Shimla w.e.f. 1.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was appointed as daily wages labourer w.e.f. 1.4.1995, who has been working on daily wages continuously, who was not appointed against any particular post or seasonal work whose services have been terminated by the respondent on 1.2.2000 without any notice and without compliance of the provisions of section 25F of the Industrial Disputes Act, 1947 and that the petitioner had completed 240 days of service in each calendar year since 1.4.1995 and the services of the petitioner cannot be terminated by an verbal order and that the petitioner was not appointed against any particular project, specific work or seasonal work, hence the respondent had no power to dispense with the services of the petitioner and that the petitioner had filed an O.A before the Administrative Tribunal which was dismissed on the ground of jurisdiction and then the petitioner approached Labour-cum-Conciliation Officer and the case of the petitioner was forwarded to this Court and that while terminating the services of the petitioner, the respondent never issued notice nor compensation was paid to the petitioner and that the petitioner had rendered about five years service on daily wages with the respondent without any break and even the work and funds are available with the respondent and that the respondent has retained the services of the daily wages workers S/Shri Dhirender Singh, Lom Bahadur, Hira Singh, Pawan Kumar, Bhagat Ram, Kirpa Ram, Laiq Ram, Sanjay Kumar, Hardev, Lila Devi and Ram Kali who were much juniors to the petitioner and even the respondent has reengaged in service certain persons after their retrenchment from ECO Development and as such the action of the respondent in terminating the services of the petitioner is illegal, unjust and violative of Articles 14 and 16 of the Constitution of India and as such prayed for reinstatement in service alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner was engaged on daily wages basis from April, 1995 in NORAD Project, Wild Life, Division Shimla in foreign aided ECO Project, who worked till 31.1.2000 and that the project was closed due to the non availability of funds, hence all daily wagers including petitioner were disengaged and no vested right is created in temporary employment. On merits, it is contended that the petitioner was engaged on daily wages basis on muster roll in Wild Life Division, Shimla as per the need of work w.e.f. April, 1995 at Potter Hill, Summer Hill, Shimla in unit II of Foreign Aided Project called as NORAD Project which was aided and sponsored by the Norway Government and the project came to an end in the year 2000 and after the completion of the project, the services of all workmen were terminated automatically and as such the person employed in a project have no vested right after the closure of the project, hence the termination from service without assigning any reason does not arise and that the petitioner had completed 240 days in service in each calendar year since 1.4.1995. It is also contended that the project was for a specific period of five years commencing from 1.4.1994 to 1998-99 which was extended upto 2000-01 and that the forest department cannot be treated as an industry, hence the question of issuing any notice under section 25F of the Industrial Disputes Act, 1947 or paying any compensation does not arise at all and that no junior except Shri Bhagat Ram has been reengaged by the department, who was reengaged by the orders of Hon'ble High Court and Smt. Sumitra, Sh. Sanjay Kumar, Hardev and Devender were initially engaged as casual labourer for the department works in Wild Life Range Kufri and Chail and S/Shri Mohinder Kumar, Jai Krishan and Dhuni Chand were reengaged by the orders of the Administrative Tribunal and as such there is no violation of Articles 14 and 16 of the Constitution of India, hence prayed for the dismissal of claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 29.11.2007 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated by the respondent w.e.f. 1.2.2000 without complying with the provisions of I.D Act, 1947? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . . .OPP.
3. Whether the petition in the present form is not maintainable as the petitioner was engaged against NORAD Project? If so, its effect? . . .OPR.
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1.	Yes.
Issue no. 2.	Entitled for reinstatement in service without seniority, continuity and back wages.
Issue no.3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue no.1 & 3.

8. Both these issues are taken up and discussed together being interlinked and correlated for sake of convenience and to avoid repetition. Coming to these issues, the petitioner appeared into the witness box as PW1, who has stated that he was engaged as beldar on daily wages by the respondent on 1.3.1995 and continued as such till 1.2.2000 and then his services were terminated by the respondent without serving any notice to him nor paid any compensation. He approached DFO Wild Life, Khalini for his reengagement who flatly refused to reengage him and then he filed a case before the Administrative Tribunal which was dismissed for want of jurisdiction and then he raised an Industrial Dispute which was not reconciled before the Labour-cum-Conciliation Officer, hence the reference was made to this Court for adjudication. He had completed more than 240 working days in every calendar year preceding his termination and as such prayed for reinstatement with seniority and continuity alongwith back wages. His colleagues S/Shri Surya Prakash, Jai Kishan, Dhuni Chand, Ramesh, Mahinder, Lom Bahadur, Bhagat Ram and Pawan Kumar are still working with the respondent department.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Gopal Singh, D.M Marketing, HP state Forest Corporation, Nigam Vihar, Shimla-2 has

stated that he remained posted as Range Officer Incharge ECO Unit-II Tutu under Wild Life Division Shimla-II from April, 1994 to 15th July, 1996 which was also known as ECO environment cooperation programme (NORAD) which was sponsored by Norway Government and was started in 1994 for five years which was extended for two years and completed in March, 2000. The petitioner was engaged as daily wages beldar in April, 1995 for specific work and for specific time whose services were dispensed with on the completion of work i.e on 31.3.2000 and proved the detail of year wise outlay project Ex. RA and the petitioner was engaged as per the need of the work including others and all the workmen engaged in the project were automatically terminated on the completion of the work and no junior to the petitioner was engaged by the respondent and also proved the mandays chart of the petitioner Ex. RB.

10. RW2 Shri Kalyan Singh has stated on oath that he remained posted as Range Officer, ECO Unit-II NORAD at Tutu from July, 1997 to December, 1999. The project was fully aided by Norway Government under Wild Life Division, Shimla which was started in 1994 for a period of five years and then it was extended till 31.3.2000 and the project was started for specific work and for specific time. The petitioner was engaged as daily wages beldar in this project prior to his posting from April, 1995 and the project ended on 31.3.2000 for want of funds and the services of all daily wagers including petitioner came to an end automatically by the closure of this project. Three juniors S/Shri Dhuni Chand, Jai Krishan and Mahinder Kumar were reengaged by the orders of the Administrative Tribunal while Shri Bhagat Ram conductor was reengaged by the orders of the Hon'ble High Court and Smt. Sumitra, Sanjay Kumar, Hardev and Devinder daily wager never remained in the project who were engaged as casual labour for departmental works at Kufri and Chail Wild Life ranges. S/Shri Dhirender Singh, Ram Kali, Lom Bahadur, Pawan Kumar, Kripa Ram, Laiq Ram, Heera Singh, Inder Dass and Leela Devi never remained in the project nor in the wild life forest division under which the work was being executed at the relevant time and Shri Inder Dass daily wager never remained at territorial division Shimla since April, 1997 and as such the claim of the petitioner is false.

11. Shri Jeevesh Sharma, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner was engaged as daily wages beldar by the respondent department, who had completed 240 working days in every calendar year preceding his termination and even juniors to him are still continuing with the respondent and moreover no specific orders were issued to the petitioner with respect to his project employment and as such the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to the petitioner at the time of his retrenchment, hence the petitioner is entitled to be reinstated in service with all consequential benefits.

12. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Sharma and has submitted that the claim of the petitioner is false as the petitioner was engaged for specific work and for specific period whose services automatically came to an end on the completion of the project which was aided by Norway Government and the services of all the workers engaged in this project were dispensed with on the completion of the project and even no junior to the petitioner has been retained by the respondent at any point of time except who were ordered to be reinstated by the Hon'ble Courts and as such the claim of the petitioner is liable to be dismissed.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wager on April, 1995, who worked with the respondent upto Jan.2001, who worked for 266 days in 1995, 353 days in 1996, 363 days in 1997, 358 days in

1998, 331 days in 1999 and 31 days in 2000 as is evident from the detail of year wise mandays chart of the petitioner Ex. RB placed on record. It is also fully proved on record that some juniors to the petitioner are still working with the respondent by the orders of the Hon'ble High Court and the Administrative Tribunal. No doubt that the respondent has tried to establish on record that the petitioner was engaged for specific period and for specific work under the project which was aided by Norway Government but there is nothing on record which could show that the petitioner was engaged by the respondent under the NORAD Project and his appointment was for limited period and for limited purpose. It is the duty of the respondent to incorporate all the facts in writing to the petitioner at the time of his engagement as daily wages worker that his engagement was for specific period and for specific purpose and after the completion of the project his services would be terminated but in the instant case, the respondent has neither issued any order to the petitioner about his engagement nor any notice and compensation as envisaged under section 25F of the Industrial Disputes Act, 1947 was given to the petitioner on the completion of more than 240 working days in every calendar year as is evident from the mandays chart Ex. RB. It is well settled by our own *Hon'ble High Court in 2008 (1) Shim. LC 513 case titled as Block Development Officer Pragpur Vs. Yoginder Kumar and others* in which it was held that:-

“Industrial Disputes Act, 1947, section 25F. Benefit under section 25F extended. Daily wages. Plea of project employment rejected.”

15. In the instant case, the respondent has also taken the plea of project employment but the respondent has failed to prove on record that the engagement of the petitioner was purely on contract basis as no contract/agreement was executed between the parties about the engagement of the petitioner against the work of project. Thus, having regard to the above cited ruling and having regard to the entire evidence on record and in view of the fact that the engagement of the petitioner was not for specific work and specific time, who was engaged by the respondent department as daily wages workman and his termination without any notice and compensation is held illegal and against the provisions of Industrial Disputes Act, 1947 as the juniors to the petitioner are still working with the respondent ignoring the petitioner without any sufficient cause. Accordingly, both these issues are decided in favour of petitioner and against the respondent.

Issue no.2.

16. Since I have held under issues no.1 & 3 above that the services of the petitioner have been illegally terminated by the respondent w.e.f. 1.2.2000 without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service with seniority and continuity from the date of his illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 30th October, 2009 in the presence of parties counsels.

J. S MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref no. 234 of 2002.
Instituted on 27.8.2003.
Decided on. 30.10.2009.

Dula Ram S/o Shri Vir Singh R/o Village Raika, P.O Dochi Tehsil Jubbal, District Shimla, HP. .*Petitioner.*

Vs.

The Divisional Manager, H.P State Forest Corporation, Division Saraswati Nagar, Sawara, Tehsil Jubbal, District Shimla, HP. .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri M.S Kanwar, Ld. Csl.
For respondent: Shri Adarsh Sharma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of the services of Shri Dula Ram S/o Shri Vir Singh w.e.f. Sept.1998 by the Divisional Manager, HP State Forest Corporation, Division Sarswati Nagar Sawara, Tehsil Jubbal, District Shimla, HP without complying the provisions of the section 25F of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of seniority, compensation and other service benefits the above workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was initially engaged as conductor in the Himachal Pradesh State Forest Corporation Division Sawara, who was posted under Sub Division, Sarswati Nagar and the petitioner was engaged w.e.f. October, 1997 in Truck no. HIS-1169 and continued as such till Sept. 1998 and that the petitioner had completed 240 days in the preceding twelve months when his services were illegally and orally terminated by the respondent and that no notice as prescribed under section 25F of the Industrial Disputes Act, 1947 was served upon the petitioner before terminating the services which is against the mandatory provisions of section 25F of the Industrial disputes Act, 1947 and that section 25F provides for conditions precedent to the retrenchment of workman which was not followed by the respondent

and that the services of the petitioner have been terminated in a verbal manner which amounts to retrenchment as per section 200 of the Act and as such prayed that the reference be answered in favour of the petitioner by granting him relief as claimed, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia contending that the petitioner was initially engaged as daily wage cleaner in the month of November, 1997 and worked till August, 1998. It is also contended that the petitioner had completed 240 days in a calendar year and that the petitioner had not worked for twelve months as he was engaged for ten months as a stop gap arrangement and the work against which the petitioner was engaged is not of a permanent nature and the petitioner had not completed 240 days in twelve calendar months. It is further contended that the petitioner had completed 51 days in the year 1997 and 198 days in the year 1998 and the services of the petitioner were disengaged in accordance with law as the work against which the petitioner engaged was not permanent in nature, hence no illegality has been committed while terminating the services of the petitioner and that no notice was required to be given to the petitioner as the petitioner has not completed 240 days in a calendar year and that the disengagement of the petitioner does not amount to retrenchment as per section 200 of the Industrial Disputes Act, 1947 and as such the disengagement of the petitioner is legal, valid and in accordance with law, hence prayed for the dismissal of the claim.

4. ejoinder filed. The following issues were framed by this Court on 25.4.2003 on the pleadings of the parties:

1. Whether termination of the services of the petitioner by respondent w.e.f. September, 1998 is violative of section 25F of the I.D Act, 1947? . . .OPP.
2. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1. Yes.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue no.1.

7. Coming to this issue, the petitioner has examined two PWs in all. The petitioner stepped into the dock as PW1, who has stated that he had joined the employment of the respondent as conductor in October, 1997 and was working in Sarswatanagar (Sawra) Sub Division of the corporation, who worked continuously upto Sept. 1998. He had completed 240 days and he was retrenched in Sept. 1998 without any notice and compensation. He requested for his reengagement with the authorities of corporation but he was not reengaged and then he served a demand notice upon the respondent and then the matter was sent to this court and as such prayed for reinstatement in service alongwith all consequential benefits including back wages and he is unemployed since his retrenchment.

8. PW2 Shri Swarn Dass working as Peon in the office of Forest Corporation, Sawra has stated that he knows the petitioner and in 1997-98, he was working as conductor/cleaner in HP Forest Corporation in its Sub division at Sarswatanagar (Sawra). The petitioner has joined in October, 1997 and had worked upto August, 1998 and two-three cleaners are still working in the said Sub Division.

9. To rebut the case of the petitioner, the respondent has examined RW1 B.M Marol, D.M Forest Corporation, Sawra, who has stated that the petitioner was engaged as daily wages cleaner w.e.f. November, 1997, who had worked as such till August, 1998, who had worked only for 198 days in 1998 and 51 days in 1997 and no work was left with the respondent after 1998 because one truck met with an accident and other truck was destroyed and no fresh hand was engaged after his disengagement and they have no work against which the petitioner can be reengaged and they have one regular and one daily rated cleaner for one truck.

10. Shri M.S Kanwar, Ld. Counsel for the petitioner has vehemently argued at the very out set that the petitioner has completed 240 working days in a calendar year preceding his termination and as such the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to the petitioner at the time of his termination and even juniors to him are still working with the respondent which is illegal and against the provisions of sections 25F, 25G & H of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service alongwith all consequential benefits.

11. On the contrary, Shri Adarsh Sharma, Ld. Csl. for the respondent has controverted the arguments of Shri Kanwar and has submitted that the petitioner has not completed 240 working days in a twelve calendar months preceding his disengagement, who was only engaged for stop gap arrangement and even no junior to the petitioner was engaged by the respondent corporation at any point of time, hence claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the respondent has examined RW1 Shri B.M Marol in its evidence who has admitted that the petitioner has completed 249 days w.e.f. Sept. 1997 to August, 1998, who has further admitted that no notice was issued to the petitioner while disengaging the services of the petitioner in the month of Sept. 1998. Now, it is clear from the record that no notice nor compensation was paid to the petitioner at the time of his termination on the completion of 249 working days in twelve calendar months preceding his termination. Moreover, *Section 25-F of the 'Act' says that:*

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

- (f) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

14. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice upon the petitioner nor upon the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947, hence the case of the petitioner squarely falls under section 25F of the Industrial Disputes Act, 1947 and as such I have no hesitation in coming to the conclusion that the services of the petitioner have been terminated by the respondent in violation of section 25F of the Industrial Disputes Act, 1947 which is illegal and unjustified, hence the petitioner is held entitled for his reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service from the date of his illegal retrenchment forthwith with seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 30th Day of 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, H.P.

Ref No. 180 of 2006.
Instituted on 29-12-2006.
Decided on. 30-10-2009.

Surinder Kumar S/o Shri Atma Ram R/o Village Tikkar, P.O Ghoondh, Tehsil Theog,
District Shimla, HP. . . *Petitioner.*

VERSUS

1. The Managing Director, Himachal Pradesh Tourism Development Corporation Ltd.,
Ritz Annexe, Shimla-1, HP.

2. The Deputy General Manager, Himachal Pradesh Tourism Development Corporation, Shimla, HP. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Jeevesh Sharma, Ld. Csl.

For respondent : Shri Tarun Vaid, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Surinder Kumar S/o Shri Atma Ram workman by the (1) Managing Director, Himachal Pradesh Tourism Development Corporation Ltd, Ritz Annexe, Shimla-1, HP (2) The Deputy General Manager, Himachal Pradesh Tourism Development Corporation Shimla HP w.e.f 29.8.1998 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim petition asserting therein that the petitioner is a matriculate and was engaged on daily wages basis by the respondents in the month of April, 1996, who was posted in the lift section of the respondents corporation, who continued as such till 28.8.1998 and that on 28-8-1998, the respondents terminated the services of the petitioner without assigning any reason and then the petitioner requested the respondents for his reengagement but of no use and that in the year 1999, the petitioner made elaborate inquiries and had come to know that the respondents had work and funds available with them and they had wrongly terminated the services of the petitioner and as such the petitioner had no other alternative but to file the O.A before the Administrative Tribunal which was dismissed on the ground of jurisdiction and that while terminating the services of the petitioner, the respondents have not issued any notice under section 25F of the Industrial Disputes Act, 1947 nor any compensation was paid to the petitioner which is illegal, wrong and unlawful and that the respondents have no power to terminate the services of the petitioner especially when the work and funds are available with the respondents and even the respondents have engaged junior persons S/Shri Sudhir Kumar, Manoj Kumar, Pradeep, Ramesh, Bishamber, Raghuvir Singh and Ved Prakesh in the job whereas the petitioner was not called back and that the reply has been filed by the respondents before the Labour-cum-Conciliation Officer, Shimla to the demand notice of the Industrial Disputes Act issued by the petitioner whereby the false allegation of misbehaving with the tourists and cheating the corporation by embezzling the lift money but no complaint has been lodged against the petitioner by the guest staying in the Hotel Holiday Home and moreover no enquiry has ever been taken place in accordance with law as no show cause notice was served upon the petitioner and no opportunity of being heard was afforded to the petitioner by the respondents and Shri Padam Dev was also on duty with the petitioner but no action was taken against the Padam Dev whereas the services of he petitioner have been illegally terminated by the respondents and as such prayed for reinstatement in service alongwith all consequential benefits, hence this claim.

3. The respondents resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objection of maintainability as the petitioner was engaged on contract basis for 89 days. On merits, it is contended that the petitioner was engaged on contract basis for a period of 89 days and the agreement was entered between the petitioner and Assistant Engineer, HPTDC on 10-4-1996 indicating the period of engagement for 89 days. It is denied that the

respondent assured the petitioner as and when work shall be available, he shall be reengaged, hence the question of termination of the petitioner does not arise at all and that no notice under section 25F of the Industrial Disputes Act, 1947 was required to be served upon the petitioner nor any compensation was required to be paid as the petitioner was employed on contract basis for a specific period. It is also denied that the respondents have engaged new persons and that the petitioner had definitely misbehaved with the tourists and cheated the corporation by embezzling the lift money. It is further contended that few guests staying at the guest house of the corporation travelled in the lift prior to disengagement of the petitioner, who paid the ticket money to the petitioner and asked for tickets but the petitioner did not give any ticket to the guests of the corporation and even the petitioner misbehaved with them and the money was pocketed by the petitioner and then the Area Manager inquired about the matter and after satisfying with the complaints made by the guests, the petitioner was rightly disengaged by the respondent and no formal enquiry was required as the services of he petitioner was on contract basis and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 5-11-2007.

1. Whether the services of the petitioner have been illegally terminated w.e.f. 29-8-1998 without any domestic enquiry or complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP
3. Whether the present petition is not maintainable as the petitioner was only engaged for 89 days? OPR
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No. 2	Entitled to reinstatement in service alongwith seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

8. Coming to issue no.1, the petitioner has examined himself as PW1, who has stated that on 10.4.1996, he was engaged by the respondent as lift operator on daily wages and continued as such till 28.8.1998. He had worked for 240 working days in a calendar year preceding his termination and the respondents used to give fictional breaks to him. No notice nor compensation was given to him at the time of his oral termination and as such prayed for reinstatement in service with seniority and continuity and his juniors S/Shri Madan Kumar and Pardeep are retained by the respondents, who are still working.

9. To rebut the case of the petitioner, the respondents have examined Shri Arvind Kumar Sharma, Manager, HPTDC (Lift) Shimla-1, who has stated that he is authorized to make the statement on behalf of the respondents vide letter Ex. RA. The petitioner was engaged as utility worker on contract basis for 89 days w.e.f. 10-4-1996 to 28-8-1998 vide agreements Ex. RB to Ex. RG with breaks and then the services of the petitioner came to an end on the completion of last agreement dated 1-6-1998. The work of the petitioner was not found satisfactory as there were many complaints against him about embezzlement and misappropriation of government money and the services of the petitioner were never terminated by the respondents as he was engaged for specific period and for specific work whose services stood automatically terminated on the completion of the contract period and no assurance was given to the petitioner regarding his reengagement.

10. The case of the petitioner is that he being a daily wages lift operator having worked for more than 240 days and his termination without notice and compensation is illegal and improper and even no enquiry was conducted against him by the respondent at any point of time and no opportunity of being heard was afforded to the petitioner which is against the mandatory provisions of Industrial disputes Act, 1947 and also against the principle of natural justice and even juniors to him are still working with the respondents and as such he is entitled to be reinstated in service with all consequential benefits.

11. On the contrary, the respondents contend that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis as utility worker whose services were never terminated by the respondents as he was engaged on contract basis for a period of 89 days and his services came to an end after the completion of 89 days and even the petitioner embezzled and misappropriated the government money and also misbehaved with the guests of the respondents, hence the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, there is no dispute about the engagement and disengagement of the petitioner, who was engaged as unskilled worker by the respondents on 10-4-1996 and worked as such till 1-6-1998 as is evident from the agreements Ex. RA to RG placed on record meaning thereby that the petitioner had worked with the respondent w.e.f. 10-4-1996 to 1-6-1998. No doubt, the respondents have tried to establish on record that the engagement of the petitioner was purely on seasonal basis but the respondents have failed to prove on record that the petitioner was engaged for a seasonal work and for specific period. It is also proved on record that the petitioner had completed 240 working days in twelve calendar months and no notice under section 25F of the Industrial Disputes Act, 1947 was served upon the petitioner nor any compensation was paid to him at the time of his disengagement. The stand of the respondents is that the petitioner embezzled and misappropriated the government money and also misbehaved with the guests of the corporation but it remains a fact that no domestic enquiry was conducted against the petitioner by the respondents at any point of time and even no opportunity of being heard was afforded to the petitioner before terminating his services. Even if, the petitioner was at fault with the respondents and even then respondents have failed to prove on record that they had afforded the ample opportunity to the petitioner to defend his case which is against the principle of natural justice as the petitioner had worked for more than 240 working days in a calendar year preceding his disengagement and obviously therefore, I have no hesitation in coming to the conclusion that the termination of the services of the petitioner by the respondent w.e.f. 29-8-1998 without holding any domestic enquiry and without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified and is liable to be set aside and quashed. Accordingly issue No.1 is decided in favour of petitioner and against the respondents.

Issue No. 2.

14. Since I have held under issue no.1 above, that the services of the petitioner have been wrongly terminated by the respondent w.e.f. 29-8-1998 without any domestic enquiry and without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is entitled to be reinstated in service with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondents.

Issue No.3.

15. In support of this issue, the respondents have examined RW1 Shri Arvind Kumar Sharma, Manager, HPTDC, who has categorically stated that the petitioner was engaged for 89 days whose services automatically came to an end after the expiry of 89 days and the fictional breaks were given to the petitioner, hence the case of the petitioner does not fall under the Industrial Disputes Act, 1947. I find no force in this contention as their lordships of *Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434*, that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947.

Similarly our own Hon'ble High Court in case Shri Manoj Kumar Sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007 has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him fictional break, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. RA to RG and further more the respondents have failed to prove on record as to how the present petition is not maintainable in the present form. In view of no such evidence on record, I have no hesitation in coming to the conclusion that the petition is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 30th October, 2009 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 65 of 2006
Instituted on. 30-5-2006.
Decided on. 30-10-2009.

Rajesh Kumar S/o Shri Parma Nand R/o Village Kawalag, P.O Beolia Tehsil & District Shimla, HP. . . *Petitioner.*

VERSUS

1. The Managing Director, HRTC, Head Quarter Shimla-1, HP.
2. The Divisional Manager, HRTC Shimla, Division Shimla-4 . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Pradeep Verma, Ld. Csl.
For responden t: Shri Rajesh Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Rajesh Kumar S/o Shri Parma Nand workman by (1) Managing Director, HRTC, Shimla (2) Divisional Manager, HRTC Division Shimla-4 w.e.f. 27.4.2001 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the petitioner commenced his carrier with the respondents on 19-8-1998, who was engaged against the post of helper. Initially the petitioner was engaged for eight nine days but thereafter he continued time and again till 26-4-2001 when he was terminated from service which was illegal for the reason that he had completed 240 days in preceding twelve calendar months before his termination and that the petitioner was given the salary of Rs. 1000/- from the date of his appointment which was enhanced to Rs. 2000/- per month and that the petitioner performed his duties to the satisfaction of his superiors, who was never served with any notice, explanation and warning by the respondents and

that the services of the petitioner were terminated without any notice, retrenchment compensation and without necessary compliance of section 25F, 25N, 25G & 25H of the Act and that the petitioner requested to explain the reason for which his services were given up but he was not given any reason and that the respondent has adopted the formula of hire and fire for ousting the petitioner and as such prayed for reinstatement alongwith full back wages and seniority, hence this claim.

3. The respondents resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability, having been employed on contract basis for 89 days and barred by delay and laches. On merits, it is contended that the petitioner was engaged on contract basis for a period of 89 days w.e.f. 19-8-1998, who was further engaged for 89 days as and when the work was available with the respondent whose services were discontinued w.e.f. 26-4-2001 as no work was available with the respondent. It is denied that the petitioner had completed 240 days in preceding twelve calendar months. It is also contended that the petitioner was not sincere in his work, who used to remain absent and even the petitioner was engaged for 89 days, hence there is no violation of Industrial Disputes Act, 1947. It is denied that the respondent has adopted the formula of hire and fire. It is contended that the services of the petitioner were dispensed with on the basis of the conditions of the contract and that the petitioner used to be engaged by the respondents for a specific period of 89 days as and when his services were required by the respondent and that the petitioner was engaged on the contract basis, hence the provisions of Industrial Disputes Act, 1947 are not applicable to him and as such prayed for the dismissal of claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 6-8-2007.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the mandatory provisions of I.D Act, 1947? If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? OPP
3. Whether the petition is not maintainable and barred by limitation? OPR
4. Relief.

5. I have heard the learned counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

- | | |
|-------------|---|
| Issue No.1 | Yes. |
| Issue No. 2 | Entitled for reinstatement in service along with seniority and continuity but without back wages. |
| Issue No. 3 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

REASONS FOR FINDINGS

Issue No. 1

7. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated on oath that he was engaged as cushion maker helper with the respondent on 19-8-1998 on a fixed

salary of Rs. 1000/- and on 27-4-2001, he was removed from service without any notice or compensation. He had completed more than 240 days in a calendar year 1999-2000 preceding his termination. He approached R.M Taradevi for his reengagement but to no avail and as such prayed for reinstatement in service with seniority and continuity alongwith back wages and the petition of his colleague Shyam Lal was also allowed by this Court.

8. To rebut the case of the petitioner, the respondent examined Shri Nand Lal, Senior Assistant, HRTC Divisional workshop Taradevi, Shimla-10, who has stated that the petitioner was engaged as cushion maker helper in HRTC at Taradevi on 16-8-1998 for 89 days vide appointment letters Ex. RA to Ex. RK and thereafter there was no work with the HRTC, hence the services of the petitioner automatically came to an end. The petitioner has not completed 240 working days in any calendar year preceding his termination.

9. The case of the petitioner is that he being a cushion helper having worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

10. On the contrary, the respondents contend that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as cushion helper, who was appointed as cushion helper by the respondent on 16.8.1998 and worked till 26-4-2001 with fictional breaks. It is also fully proved on record that the petitioner was appointed as cushion helper on contract basis for 89 days which was renewed from time to time as is evident from Ex. RA to RK placed on record who worked for 304 days w.e.f. 4/2000 to 4/2001 as is evident from the detail of month wise wages Ex. PA placed on record. Moreover, the petitioner has completed 240 working days in a calendar year preceding his termination and his termination without notice or retrenchment compensation is illegal. No doubt, the respondents have tried to establish on record that the petitioner was engaged for specific period and for specific work for 89 days and after the expiry of 89 days, fictional breaks were given to the petitioner, hence the case of the petitioner does not fall under the Industrial Disputes Act, 1947. I find no force in this contention as their lordships of **Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434.** that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus, it is not covered by section 2(o) (bb) of the Industrial Disputes Act, 1947.

Similarly our own Hon'ble High Court incase Shri Manoj Kumar Sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007 has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him fictional

breaks, reengaged for another 89 days followed by others enagements for 89 days as is evident from Ex. RA to RK. It is fully proved on record that even after giving fictional breaks, the petitioner has completed 304 days in the year 2000-01 preceding his termination as is evident from Ex. PA placed on record. This practice of fictional breaks has been adopted by the respondents to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner has completed 304 working days before his termination was affected and his termination without notice and without payment of compensation in lieu thereof under section 25-F of Industrial Disputes Act, 1947 is illegal and improper. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2

13. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue No. 2 is decided in favour of petitioner and against the respondent.

Issue No. 3.

14. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form and there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.* in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and the claim is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 30th October, 2009 in the presence of parties.

J. S. Mahantan,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**सामान्य प्रशासन विभाग
(गोपनीय एवं मंत्रीमण्डल)**

अधिसूचना

शिमला— 2, 7 दिसम्बर, 2009

संख्या जी.ए.डी.(सी सी)5-2/71.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 166 के खण्ड (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दी बिजनैस ऑफ दी गवर्नमेंट ऑफ हिमाचल प्रदेश (एलोकेशन) रूलज, 1971में और संशोधन करने के लिए एतद् द्वारा निम्नलिखित नियम बनाती हैं, अर्थातः—

1. संक्षिप्त नाम.—इन नियमों का संक्षिप्त नाम दी बिजनैस ऑफ दी गवर्नमेंट ऑफ हिमाचल प्रदेश (एलोकेशन) (138 अमैण्डमेंट) रूलज, 2009 है ।

2. शीर्षक “NONCONVENTIONAL ENERGY SOURCES DEPART MENT” के अधीन नई मद जोड़ना.—बिजनैस ऑफ दी गवर्नमेंट ऑफ हिमाचल प्रदेश (एलोकेशन) रूलज, 1971 में “NON-CONVENTIONAL ENERGY SOURCES DEPARTMENT” शीर्षक के अधीन मद संख्या 2 के पश्चात् निम्नलिखित मद जोड़ी जाएगी, अर्थात, :—

“3. Mini Micro Hydel Projects upto 5.00 MW”

राज्यपाल के आदेश द्वारा,
हस्ताक्षरित /—
मुख्य सचिव।

[Authoritative English Text of this Department Notification No. GAD (CC)-5-2/71 dated 7-12-2009 as required under clause (3) of article 348 of the Constitution of India].

**GENERAL ADMINISTRATION DEPARTMENT
(Confidential and Cabinet)**

NOTIFICATION

Shimla-171002, the 7th December, 2009

No. GAD (CC)-5-2/71.—In exercise of the powers conferred by clause (3) of article 166 of the Constitution of India, the Governor, Himachal Pradesh, hereby makes the following rules

urthar to amend the Business of the Government of Himachal Pradesh (Allocation) Rules, 1971, namely:—

1. Short title.— These rules may be called the Business of the Government of Himachal Pradesh (Allocation) (138th Amendment) Rules, 2009.

2. Addition of item No. 3 under heading “NON -CONVENTIONAL ENERGY SOURCES DEPARTMENT.”—In the Business of the Government of Himachal Pradesh (Allocation) Rules, 1971 under the heading “NON-CONVENTIONAL ENERGY SOURCES DEPARTMENT” after item number 2, the following item shall be added, namely:—

“3. Mini Micro Hydel Projects upto 5.00 MW”

By Order,
Sd/-
Chief Secretary.
